92-948

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1992

COY RAY PHELPS, 78872-011,

Petitioner,

against

PETER CARLSON, Warden of the Federal Prison at Rochester, Minnesota, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI FOR THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

U.S. District Court at Minneapolis, Minnesota
Habeas Corpus Case Number 4-91-843

U.S. Court of Appeals for the Eighth Circuit
Appeals Case Number 92-3085

PETITION FOR A WRIT OF CERTIORARI

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(S2489—LC7-531—1992)

Questions Presented

1. Is it constitutionally permissible to forcibly administer Mind Altering Drugs (Psychotrophics, Neuroleptics, or anti-psychotics) to obtain confessions of past activities or to obtain guarded secrets or private and privileged information from a person?

2. Is it constitutionally permissible to forcibly administer, without consent, Mind Altering Drugs (MAD) to obtain secret, private, and privileged information about a person, and then use that information to deprive that person of life, liberty, property, or opportunity?

3. Is it constitutionally permissible to forcibly medicate a person, without consent, with MAD as a device or instrument or torture or to inflict punishment, harm, injury, pain, and suffering?

4. Is it constitutionally permissible to forcibly administer MAD as a form of "treatment" when the end result and effect is not distinguishable form punishment?

5. Is it constitutionally permissible to forcibly medicate a competent *involuntary* civilly committed insanity acquittee with MAD without the acquittees' consent?

6. Is it constitutionally permissible to forcibly medicate a person with MAD when the person does not exhibit abnormally hostile, confrontation, violent, disruptive, or disorderly behavior?

7. Is it constitutionally permissible to forcibly medicate a person with MAD when that person is rational, lucid, oriented, and is not gravely mentally disabled?

9. Is it constitutionally permissible to forcibly medicate a person with MAD solely to modify or to extinguish the persons' religious beliefs, political ideologies, or philosophical theories and thoughts?

10. Is it constitutionally permissible for a mental health professional to forcibly prescribe or to administer MAD to a person when the professionals employer has established that the person has the right to refuse treatment?

11. Is it constitutionally permissible for a mental health professional to prescribe the forcibly administration of MAD to a person solely for Administrative economics?

12. Is it constitutionally permissible to prescribe the forcible administration of MAD upon institutional inmate population solely for better mass control?

13. Is it a violation of the Constitution to deny a mentally disable person individualized care and treatment specific and particularized to that persons metal health?

14. Is it a Constitutional violation, and a breech of professional judgment, to prescribe the forcible administration of MAD knowing that such MAD would cause irreparable adverse physiological and psychological conditions?

15. Does the federal mental health statutes 18 USC 4243 and 18 USC 4247 mandate or require the use of MAD upon a insanity acquittee or other civilly committed person?

16. When the U.S. Supreme Court stated that assistance of counsel was not required in a civil hearing in determining the administration of MAD, did it mean that the institution could

prohibit assistance of counsel when counsel was willing and available?

17. Are the secret thoughts, ideas, imaginations, dreams, and mental constructs of a person property?

18. Are the secret thoughts, ideas, dreams, imaginations, and mental constructs of a person protected by the 4th Amendment to the U. S. Constitution under the unreasonable search and seizure clause?

19. Are the government employees and officials who prescribe or forcibly administers MAD to a competent unconsenting person subject to the liability of clause 2, 3, and 4 of the fifth Amendment to the U. S. Constitution?

20. Is it constitutionally permissible to prescribe or to forcibly administer MAD to hinder or impede access to the courts?

21. Is it constitutionally permissible to prescribe or to forcibly administer MAD solely to hinder or to impede the preparation of litigation?

22. Is it constitutionally permissible for a Bureau of Prison employee to prescribe or to forcibly administer MAD to a insanity acquittee or a federal prisoner when federal statutes require that Public Health Service employees provide care and treatment to those in federal custody?

23. Is it a violation of the check and balance principle of U.S. Government to place the public health service under the jurisdiction and authority of the U.S. Attorney General (under the provisions of the Reorganization Act) so that the Attorney General may utilize the medical profession to collect information from a person through the forced medication of MAD?

24. Is it constitutionally permissible to prescribe or to forcibly medicate a competent person solely to hinder, impede, or to distort communication between the person and the person's attorney?

25. Did the U.S. District Court err in its judgment by refusing to consider the perjured affidavits of the Psychiatrist that were submitted to the court when the Psychiatrist was the one who prescribed the forcible administration of MAD?

26. Did the U.S. Court of Appeals for the Eighth Circuit err by dismissing the case as frivolous and without merit under the provisions of Rule 47A of the 8th Circuit Rules?

27. When a hearing panel is convened to determine the forcible administration of MAD upon a person, is it ethical, professional, or constitutionally permissible for a relative (by blood or marriage), or a friend, or collegue, or employee of the institution to sit as a neutral decision maker?

28. Does the statutory provisions of 42 USC 250 provide that the Officials, Staff, Personnel, and Employees of the Federal Bureau of Prisons are subordinate to the jurisdiction, authority, direction, and supervision of the Officials, Staff, Personnel, and Employees of the Federal Public Health Service in the internal management, control, operation, and administration of a Federal Medical Center in providing care, treatment, safety, and security of the inmates assigned for medical/surgical care and treatment?

29. Pursuant to the statutory provisions of 42 USC 250 is the Public Health Service responsible for all activities, rules, and regulations *within* the outer perimeter of the facility while the Federal Bureau of Prisons is responsible only for that which is *outside* the perimeter of the facility (where the only purpose is to prevent escape)?

30. Did the District Court err in refusing to rule on an application for a emergency temporary restraining order and delayed the ruling for almost one year?

31. Did the U.S. District Court err in not appointing a meaningful counsel to represent the Petitioner in the case?

32. Did the U.S. Court of Appeals err in not appointing a meaningful counsel to represent the Petitioner?

33. Is it a constitutional violation to forcibly medicate a person with dangerous psychotropic drugs because the person refuses to speak or is selective about with whom he will speak; because the person refuses to associate with others or is selective about with whom he will associate; because of the religious, political, philosophical, or cultural beliefs of the person, because of the writings of the person when the content of the writings do not violate any law?

34. Is it a constitutional violation to forcibly medicate a person with dangerous psychotropic drugs to hinder, delay, interfere with, or to deny a person the right to petition the government for redress of grievances and access to the courts?

35. Does the word "treatment" in the federal mental health statutes 18 USC 4241-4247 mandate or require the custodians of the mental patient to forcibly medicate the patient before the patient can be released to society?

36. Does the phrase "gravely disabled" in *Washington v Harper* mean "refusal to speak," or "refusal to associate," or "hostile attitudes" and "feelings, sensations, and delusional or bazaar thoughts, ideas, beliefs, or theories?"

37. Does the word "dangerous" in *Washington v Harper* mean merely a perceived danger, or a speculative danger, or a hypothesized danger, or a possible danger, or did the court mean that the "danger" must be a clear and present imminent threat to life or property?

38. When the court used the word dangerous in *Washington v. Harper* did it mean "dangerous" as perceived and defined arbitrarily by each individual, or did it mean "violent behavior" as determined by the clear and present imminent principle?

39. Did the court mean, in *Washington v Harper,* the term "gravely disabled" to mean.....A PERSON WHO SUFFERS FROM SUCH A MENTAL DISABILITY THAT THE PERSON IS UNABLE TO FEED HIMSELF, DRESS OR CLOTHE HIMSELF, PROVIDE BASIC HYGIENE CARE FOR HIMSELF, AND UNABLE TO PREVENT HARM AND INJURY TO HIS OWN PHYSICAL BODY (e.g., a child who repeatedly touches a hot stove or the flame of a candle in spite of the experience of being burned)?

Parties

Petitioner:

COY R. PHELPS, 78872-011, P.O. Box 4600, Rochester, Minnesota, 55903-4600

Respondents:[1]

PETER M. CARLSON, Warden of the Federal Prison at Rochester, Minnesota, P.O. Box 4600, Rochester, Minnesota, 55903-4600

RUTH WESTRICK, Associate Warden of the Federal Prison at Rochester, Minnesota, 55903-4600

WALTER KUCKES, P.O. Box 4600, Rochester, Minnesota, 55903-4600

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[1]The name and address of the Counsel for the Appellees is U.S. Attorney A.P. Siekert, 110 South 4th Street, Minneapolis, Minnesota, 55401

Opinions Below

There are no published opinions regarding this Petitioner and the issues, points of issues, and legal theories presented herein.

Pending Action

1. The case of Phelps vs. Rison (Case No. 92-0624) has been submitted to the Supreme Court in which some points of issues are the same issues in this case regarding mind-altering drugs.

2. The Government has waived its right to oppose the Petition in the above case.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

COY RAY PHELPS, 78872-011,

Petitioner,

v.

PETER M. CARLSON, Warden of the Federal Prison at Rochester, Minnesota, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI FOR THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petition for Writ of Certiorari

PETITIONER in this action, appearing in *pro se,* respectfully prays that a Writ of Certiorari be issued from this court to review the claims, actions, issues and points of issues, and legal theories and arguments in the above captioned case which was dismissed by the U.S. District Court, District of Minnesota, Fourth Division and the U.S. Court of Appeals for the 8th Circuit which disposed of all the issues of the case regarding the parties concerned.

Statement
Why Writ of Certiorari should be granted

This case has ethical, legal, and moral issues which needs the court's guidance regarding the use of mind altering drugs, by government agencies, to obtain confessions and information about a person's background which are both related to the crimes charged and unrelated to crimes charged.

This court has not ruled on these issues, specifically and directly since the 1960s when the CIA used LSD on military personnel.

The opinion of this court will affect all people in mental institutions and will insure safeguards and protections for political dissidents who participate in legitimate government dissent, and will establish due process standards imposed upon the government before it can label a person "dangerous."

The opinion of this court will provide needed guidelines to the lower courts, to all medical professionals, and to the custodians of mental health institutions and facilities and penal institutions.

The opinion of this court will also answer:

a. Who is responsible for the care and treatment of insanity acquittees and federal prisoners;

b. The level of professional judgment required of medical personnel;

c. If a person's secret and guarded thoughts are protected by the 4th and 5th and 9th amendments;

d. What minimum standards of safeguards and protections are required;

e. Whether Civilly committed insanity acquittees have more rights and protections than convicted prisoners;

f. Whether insanity acquittees and federal prisoners should be under the authority of the Surgeon General rather than the Attorney General;

g. Whether the laws have been violative of the check and balance principles of the republican form of government;

h. Who is responsible for determining if a person is dangerous or not dangerous (the medical profession or the government).

Proceedings Below

10/21/91	1	Federal PETITION FOR WRIT OF HABEAS CORPUS—Assigned to Judge Harry H. MacLaughlin per habeas corpus and referred Magistrate Judge Franklin L. Noel. 9+ pgs (Letter sent to Petitioner Informing him of case assignment) (pk) [Entry date 10/22/91] [Edit date 10/23/91]
10/21/91	2	PETITION by plaintiff for temporary restraining order (no date/time set) (pk) [Entry date 10/22/91]
10/25/91	3	ORDER (Magistrate Judge Franklin L. Noel / 10/24/91) directing respondent to show cause why writ should not be granted (cc: all counsel) (2 pgs) (sh)

11/6/91	4	MOTION by respondents to enlarge time to respond to petition for writ of habeas corpus (no judge noticed) (no date/time noticed) (2 pgs) (sh)
11/8/91	5	ORDER (Magistrate Judge Franklin L. Noel / 11/7/91) that the respondents are granted an extension of ten days, to and including 11/27/91, in which to respond to petitioner's writ of habeas corpus [4-1] (cc: all counsel) (1 pg) (sh)
11/26/91	6	RESPONSE by the USA to petitioner's petition for writ of habeas corpus (8 pgs) (sh) [Entry date 11/27/91]
11/26/91	7	EXHIBITS 1-6 supporting response of the USA to petitioner's petition for writ of habeas corpus (separate) (sh) [Entry date 11/27/91]
12/3/91	8	Traverse, REPLY by petitioner to respondent's show cause response [6-1] (33 pgs) (sh)
4/27/92	9	REPORT AND RECOMMENDATION (Magistrate Judge Franklin L. Noel /4/24/92) that: petitioner's motion for TRO and for writ of habeas corpus be DENIED [2-1] [2-2] (cc: all counsel) (jr)
4/27/92	—	Docket Modification (Utility Event) [2-1] terming petition for temporary restraining order [2-2] (cf) [Entry date 05/14/92]
5/1/92	10	OBJECTIONS by plaintiff to Report and Recommendation [9-1] (7+ pgs) (sh)
5/21/92	11	RESPONSE by United States to petitioner's objection to report and recommendation [10-1] [9-1] (4 pgs) (sh) [Entry date 05/22/92]

6/4/92 12	LETTER to court from plaintiff regarding two recent US Supreme Court decisions which will have a bearing on this action (1+ pgs) (sh) [Entry date 06/05/92]
8/12/92 13	ORDER (Chief Judge Harry H. MacLaughlin) that: 1. The objections of the petitioner to the report and recommendation are overruled [9-1]; 2. The Court adopts the report and recommendation; and 3. Petitioner's motion for temporary restraining order and writ of habeas corpus is denied (cc: all counsel) (1 pg) (sh)
8/12/92 14	JUDGMENT entered (see docket entry #13) (1 pg) (sh)
8/12/92 —	Terminates Case (Utility Event) (sh) [Entry date 08/13/92]
8/20/92 15	NOTICE OF APPEAL by plaintiff Coy Ray Phelps from Chief Judge Harry H. MacLaughlin decision filed on 8/12/92 [13-1] (3 pgs). (1b) [Entry date 09/01/92]
8/20/92 —	DELIVERED TWO CERTIFIED and one uncertified copy of each of the following to the Court of Appeals, St. Paul Office: Notice of Appeal, Order, Judgment and District Court Clerk's Docket Entries. Copy of Notice of Appeal mailed to counsel (1b) [Entry date 09/01/92]
10/5/92 —	JUDGMENT of U.S. Court of Appeals 8th Circuit dismissed under Rule 47A, Eighth Circuit Rules case Number 92-3085MNMI

1. Petitioner was indicted in September of 1985 on Multiple counts of bombings of buildings. Petitioner entered a plea of "NOT GUILTY BY REASON OF INSANITY" pursuant to 18 USC 17 (then 18 USC 20).

2. In September of 1986 a jury returned a verdict of "Not Guilty by Reason of Insanity." Petitioner was committed to the custody of the U. S. Attorney General pursuant to 18 USC 4243(e) which mandated a placement in a hospital.

3. The attorney general placed the Petitioner in a Federal Prison at Terminal Island California and subsequently at the Federal Prison at Springfield, Missouri, and subsequently at the Federal Prison at Rochester, Minnesota (where he is presently located).

Jurisdiction and Authority

This appeal is taken from the final judgment of the United States Court of Appeals for the Eighth Circuit at Saint Louis, Missouri which dismissed the case pursuant to Rule 47A of the Rules for the Eighth Circuit Court of Appeals which expresses the terms that a case can be dismissed if the court deems the case frivolous or without merit.[2] The case was previously presented to the U. S. District Court, District of Minnesota, Fourth Division at Minneapolis, Minnesota which dismissed the case and disposed of all of the causes of actions, claims, theories, issues, and points of issues related to the case and regarding the parties concerned.[3]

The U.S. District Court had jurisdiction and Authority to review the case and to grant relief and remedy pursuant to the provisions of Article 3, Amendments 1 and 9 of the U.S. Constitution; 28 USC 2241; 42 USC 1988; and Case Law Authorities.[4]

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[2]A copy of the Judgment of the 8th Circuit appeals in Appendix A.

[3]A copy of the final Order and Judgment, together with the Magistrates' Report and Recommendation appears in Appendix A.

[4]All Case Law Authorities (Citations and Memoranda of Law) which are directly related to the issues and the points of issues of this case but are not cited herein, appears in Appendix B.

The United States Court of Appeals for the Eighth Circuit had jurisdiction and authority to review the case and to give a judgment pursuant to Article 3 and Amendments 1 and 9 of the U. S. Constitution, and the provisions of 28 USC 1291 and 2253; and Case Law Authorities.

The U.S. Supreme Court has Jurisdiction and Authority to review this case and to render an opinion pursuant to the provisions of Article 3 and Amendments 1 and 9 of the U. S. Constitution; the statutory provisions of 28 USC 1251, 2101 and 2106; and Case Law Authorities.

Legal Provisions

Laws in Motion and Argument:

The *First Amendment to the U. S. Constitution:*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

And *Amendment 4 of the U.S. Constitution:*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

And *Amendment 5 of the U.S. Constitution:*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

And *Amendment 9 of the U.S. Constitution:*

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

And *42 USC 250:*

The Service shall supervise and furnish medical treatment and other necessary medical, psychiatric, and related technical land scientific services, authorized by section 4005 of Title 18, in penal and correctional institutions of the United States.

And *18 USC 4081:*

The Federal penal and correctional institutions shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

And *42 USC 10841*:[5]

This statute is lengthy and is set down in APPENDIX B in complete form, but excerpts are presented here:

> "The right to appropriate treatment most supportive to personal liberty . . ."
> "The right to individualized treatment . . ."
> "The right to participate in the treatment program and to be active in planning a treatment program . . ."
> "The right to refuse treatment . . ."
> "The right not to be the subject of experimentation."
> "The right to be free from restraints and seclusion."
> "The right to humane treatment . . ."
> "Right of confidentiality of records . . ."
> "Right to review ones own records . . ."
> "Right of access to courts and counsel . . ."
> "Right to complain of abuse and mistreatment without retaliation . . ."
> "etc, etc."

Federal Bureau of Prison Policy Statements 6000.602, 6000.(59-91), 6000.(139-91):

The Policy Statements are lengthy and is found in APPENDIX B.

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[5]This statutory provision is made available to Federal inmates under the equal rights/justice/protection clauses of Article 4 Section 2 of the United States Constitution. This statute offers no substantive right when standing alone, but when joined with 18 USC 4081 and 42 USC 250, this statute offers substantive rights to the insanity acquittee in federal custody.

Statement of the Case

The issues before this court are:

1. Whether a competent, lucid, and rational involuntary civilly committed insanity acquittee, who is not exhibiting any psychotic symptoms, and who is not abnormally disruptive, disorderly, hostile, or confrontational, and who does not present a clear and convincing imminent threat and danger to life or property, and who is not gravely disabled, has the right to refuse mind altering psychotrophic, or neuroleptic, or antipsychotic drugs and medication;

2. Whether a mental health professional has the right, or ethical/legal authority, to prescribe, order, or to forcibly administer mind altering drugs to a person solely to alter, modify, or to extinguish a person's religious beliefs, political ideologies, or philosophical thoughts and theories;

3. Whether mind altering drugs can be prescribed, or forcibly administered to obtain secret and withheld information and to deprive that person of life, liberty, property, or opportunity based upon the information obtained;

4. Whether mind altering drugs may be prescribed or forcibly administered for torture or the affliction of pain, harm, injury, or suffering; or used as discipline and punishment;

5. Whether a person can be prescribed or forcibly medicated with mind altering drugs to force a person to speak or to communicate, or force a person to associate with others which he would not associate with, or merely to lower the level of resistance and will power of the person so that the person can be more easily persuaded, or maneuvered, or directed to surrender the person's Constitutional, statutory, Civil, and Common Law rights, privileges, guarantees, immunities, safeguards, and protections;

6. Whether the Officials, staff, personnel, and employees of the Federal Bureau of Prisons are totally subservient and subordinate to the officials, staff, personnel, and employees of the Federal Public Health Service . . . or the opposite . . . whether the Federal Public Health officials, staff, personnel, and employees are totally subservient and subordinate to the Federal Bureau of Prison officials, staff, personnel, and employees regarding the care, treatment, safety,

security, discipline, healing, recovery, rehabilitation, therapy, and punishment of a civilly committed insanity acquittee;

7. Whether due process for a patient is to be meaningful or whether a semblance or gesture of due process is adequate.

Statement of Facts

1. This Petitioner was acquitted by a jury on charges of bombing of buildings which rendered an opinion of NOT GUILTY BY REASON OF INSANITY in September of 1986 in the U.S. District Court, Northern District of California (case Number CR-85-0899-RFP).

2. This Petitioner was then committed to the custody of the U.S. Attorney General pursuant to the provisions of 18 USC 4243(e).[6]

3. This Petitioner was subsequently placed in the Federal Prison at Terminal Island (San Pedro) California, and then transferred to the Federal Prison at Springfield, Missouri and then transferred to the Federal Prison at Rochester, Minnesota where he is presently imprisoned.

4. This Petitioner was examined and evaluated by four Psychiatrists and four psychologists (as a team) only one month prior to his transfer to the federal prison at Rochester, Minnesota in September of 1991.[7]

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[6]Petitioner is challenging the constitutionality and application of the federal mental health statutes and the federal bureau of prison statutes in the cases of *Phelps v. U.S. Federal Government, et al.*, U.S. District Court, District of Minnesota, Fourth Division, Cases 4-91-887, 4-91-888, and 4-92-572. (Case 4-91-887 is also in the U.S. Court of Appeals for the 8th Circuit at Saint Louis, Missouri.)

[7]The team of mental health professionals used the DSM-III manual published by the American Psychiatric Association which labels specific mental illnesses. A "residual type" of mental illness means that a mental illness is not active or is not present and is not evident and that there has been no indication of a mental illness for some period of time. A residual type of mental illness should be released to the community without a prescribed medication regimen if the patient is not on medication. (This petitioner had not been given any medication for at least two years prior to his transfer to the Federal Prison at Rochester, Minnesota.)

5. Upon arrival at the Federal Prison at Rochester, the Petitioner was assigned to Dr. Walter Kuckes (a Federal Bureau of Prison staff psychiatrist) and to Dr. Steve Norton (a Federal Bureau of Prison staff psychologist).[8]

6. *Upon arrival* at the Federal Prison at Rochester, Minnesota, on the first day, Dr. Kuckes told the Petitioner that he was prescribing the neuroleptic drug THORAZINE for the Petitioner and that the Petitioner was *required* to take the drug as a matter of policy of the prison and as his own personal policy.

7. Dr. Kuckes had not examined the Petitioner, nor interviewed the Petitioner, nor assessed or evaluated the Petitioner prior to that decision.

8. Dr. Kuckes had not reviewed the medical records of the Petitioner prior to that decision (The medical records did not arrive at the facility until October 10, 1991. . . one month after arrival at the facility).

9. The Petitioner was not exhibiting any psychotic behavior or psychotic thought processing. The Petitioner was not argumentative, confrontational, combative, violent, disruptive, nor disorderly. The Petitioner was not irrational nor disoriented to time and place. Yet Dr. Kuckes insisted that the Petitioner be medicated with mind altering drugs (MAD) without the consent of the Petitioner.

10. Petitioner told the Doctor that he, nor any other member of the medical staff had the authority to order the medication since they were not a member of the public health service or under the direction of the Surgeon General. This Petitioner complained to the Doctors' supervisors, but the complaints were met with com-

[8]The supervisors of these staff members are Dr. Ruth Westrick (Associate Warden and Chief of Mental Health Services), Dr. Giminez-Reyes (Chief Psychiatrist) and Dr. Daniel Foster (Chief Psychologist) all of whom are defendants in this action and other actions.

plete indifference and with threats of a physical assault if the petitioner did not willingly take the medication.[9]

11. Petitioner informed Dr. Kuckes, Dr. Norton, and their supervisors that he suffered an adverse physiological and psychological reaction to MAD previously, but the information was indifferently ignored.

12. Petitioner was locked in punitive segregation for refusing to take the MAD. (The seclusion and isolation procedure is also utilized by BOP (Bureau of Prison) staff to eliminate witnesses to any assaults on patients.)

13. When the Petitioner informed the Doctors of his religious beliefs, they informed him that his religion was offensive to them and that they were going to force medicate him with MAD to modify his religious beliefs and to make the beliefs more sociologically acceptable.

14. When in a *one-to-one* private conversation with Dr. Kuckes, the Petitioner casually used the word "nigger" in reference to the Negroid race. Dr. Kuckes said that he was going to force medicate the petitioner with MAD to insure that he would learn not to use such "inappropriate words." On subsequent one-to-one interviews with other nursing staff members and with Dr. Norton, the Petitioner often used the word "niggers" in reference to the Negroid race (since race and religion are inseparable in the petitioners' religious belief system which is a culturally shared

[9]Prior to the filing of this Petitioner's law suit in U.S. District Court, the Standard Operating Procedure for the prison was that when a person refused to take MAD willingly, an attempt was made to verbally persuade him to take the drug. A time limit of 15 minutes was allowed for the persuasion. At the end of the time period, a group of correctional officers would assemble outside the person's door (called a goon squad). The 4 or 5 man team would assault the prisoner while a nurse or a doctor or a physicians assistant would inject the person with the MAD (usually an extra double dose to insure a future lack of resistance).

belief by approximately 20 million Americans).[10] He told the Petitioner that he would teach the Petitioner not to use such words even when the petitioner was not exhibiting any behavior which warranted MAD.

15. Thereafter, Dr. Kuckes (and the other team members) continually (daily) harassed the Petitioner through the use of threats, intimidations, coercions to willingly submit to the medication, but the Petitioner steadfastly refused asserting frequently that he suffered adverse reactions to MAD.[11]

16. Dr. Westrick, and the other team members, informed the petitioner that his religious views would not be tolerated at the prison and that he would be forcibly medicated to modify those views and beliefs. They told the petitioner that the petitioner must submit to the prison rules and regulations, but the Petitioner continually asserted that the Federal Bureau of Prison rules and regulations did not apply to him since he was an unconvicted and unaccused civilly committed insanity acquittee and the rules and regulations for the prison were established ONLY for those *accused* of crimes and those *convicted* of crimes as stated in 18 USC 4042(2)(3) which reads as follows:

> § 4042. Duties of Bureau of Prisons
>
> The Bureau of Prisons, under the direction of the Attorney General, shall—

[10]The DSM-III manual states that culturally shared beliefs cannot be utilized in the assessment, evaluation, or diagnosis of a mental illness, yet Dr. Norton, Dr. Foster, and Dr. Kuckes used this culturally shared belief to diagnose the Petitioner as substantially mentally ill and dangerous to warrant continued incarceration. Dr. Norton made an affidavit to the trial court (ND Cal) that the Petitioner was mentally ill and dangerous because of his religious beliefs. He also testified to that in open court in July of 1992 at a special release hearing (Cr-85-0899, ND Cal).

[11]Petitioner submitted to the U.S. District Court the statements of prisoners who witnessed the harassing actions of staff attempting to coerce the Petitioner into a submission to take the MAD.

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State and local governments in the improvement of their correctional systems.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

17. Petitioner filed an action is U.S. District Court requesting an emergency temporary restraining order and cited the circumstance and reasons and the request was ignored by the court and the court did not rule on the matter for almost one year later.

18. Petitioner filed a simultaneous action challenging the prison policy of force medicating a person, in the similar status as the Petitioner who was falsely imprisoned in a federal prison and was subjected to rules and regulations established for only those accused of crimes and those convicted of crimes, and challenged the use of forced medication on competent non-violent civil committants.

19. Dr. Kuckes made a sworn affidavit that he did not prescribe nor attempt to force medicate the Petitioner. An excerpt copy of his affidavit is found in APPENDIX C.

20. Unbeknown to Dr. Kuckes, Dr. Norton submitted a sworn statement to the U.S. District Court for the Northern District of

California in the case of 85-0899-RFP on another matter, but in the sworn statement the Doctor stated that Dr. Kuckes has prescribed antipsychotic medication for this Petitioner, but that this petitioner had steadfastly refused to take the drugs. This sworn statement made the statement of Dr. Kuckes perjurious thereby violating 18 USC 1001 and other applicable statutes regarding perjury.

But, Dr. Norton also perjured himself in the sworn statement. He stated that he had personally reviewed the medical record of the Petitioner and that the Petitioner had been given MAD in the past and that the Petitioner did not suffer any adverse effects from the drugs. An excerpt of a copy of his statement appears in APPENDIX C.

21. Unbeknown to Dr. Kuckes or to Dr. Norton, a prison psychologist from the federal prison at Springfield had testified in open court (August 1989, USDC ND Cal) that the Petitioner had been administered MAD and suffered a severe adverse effect which made him gravely disabled for a four month period. Dr. Dave Myrad testified that he had personal knowledge of the incident and that he was also reviewing the incident from the notations made in the Petitioner's medical record which he had before him during testimony.[12]

22. Dr. Norton also falsified the medical report in other matters and submitted the statement to the same court.

23. The petitioner made numerous administrative remedy complaints and appeals, and the highest authority of the federal bureau of prison (the central office) stated in the administrative remedy response that this petitioner was not required to take any form of treatment, and that the Petitioner had a right to refuse any

[12]Petitioner made a request to the court for a copy of the testimony, but the court refused to send the copy even when Petitioner would pay the required costs.

form of treatment that was even required by the staff of the BOP. A copy of the response is found in APPENDIX D.

24. The District Court, and the U.S. Court of Appeals, ignored the perjured affidavits of the prison staff, and dismissed the case.

25. Dr. Kuckes then solicited the aid of the attorney advisor for the prison to get the petitioner medicated with MAD. They agreed to force medicate the Petitioner to stop the litigious efforts of the Petitioner against prison officials.

26. Petitioner also made an "in person" appeal to the Warden of the prison while in the inmate dining room. The appeal was met with complete indifference.

27. In August of 1992, a special release hearing was made in the U.S. District Court, ND California to determine if the petitioner should be released. The release was denied on the grounds that the petitioner had not revealed enough information about his history (even history not related to the crime or the nature of the crime charged). The court suggested (strongly) that the medical staff of the prison find a method to obtain information about the Petitioner's past history and to get the Petitioner to confess to his history. The staff at the prison interpreted this order of the court to mean forced medication with MAD to obtain confessions and past historical data and information, and told the Petitioner that he was going to be forced medicated with MAD to lower his will power and resistance so that they could obtain information for the court and the trial prosecutor. (The prosecutor had urged the court to proceed in that manner; and Dr. Norton and Dr. Kuckes spoke to the prosecutor personally on the telephone many times to ascertain what information the prosecutor wanted.)[13]

[13]Petitioner requested a copy of the telephone billing from the telephone service under the Freedom of Information Act and Discovery, but the U.S. Attorney obtained a stay of discovery order from the court to prevent obtaining that information. The stay order is still in effect.

28. This Petitioner requested assistance from Public Health Officers at the prison to intervene in the arbitrary and capricious actions of correctional officers which interfered with, impeded, hindered, and extinguished mental and physical growth, healing, recovery, and rehabilitation which is the purpose and intent of USC 4243 and 4247, but the Public Health Officers informed the Petitioner that they were only "on loan" to the Federal Bureau of Prisons and that all Public Health Officials, officers, staff, personnel, and employees must be completely subordinate to the Officials, Staff, Personnel, and Employees of the Federal Bureau of Prisons (including the lowest ranking correctional officer). A Federal Bureau of Prison Correctional officer ordered that the Petitioner be disciplined and punished knowing that such an order was not only contrary to BOP policy and would violate the Petitioner's Constitutional rights, but that such actions would have had an adverse psychotherapeutic effect upon the Petitioner. The officer ignored the individualized needs of the Petitioner which needs are mandated by 18 USC 4081 and 42 USC 10841 (See ante *supra* APPENDIX B).

Petitioner notified the Public Health Officers and the Correctional staff that the *Public Health Service* had the ruling authority over the Petitioner and not the Federal Bureau of Prison.[14]

[14]This Petitioner presented this legal theory not only in this case in the District Court (Cases 4-91-843) but also in other cases in the same court (Cases 4-91-887 and 4-91-888 and 4-92-572 D Minnesota, 4th Division). Petitioner asserted that 42 USC 250 gave the Surgeon General complete and total authority over insanity acquittees, which placed Bureau of Prison officials and employees subordinate to the authority of the Surgeon General and the Public Health Service; and that NO CORRECTIONAL OFFICER COULD DO ANYTHING WITHOUT THE APPROVAL OF THE PUBLIC HEALTH SERVICE EMPLOYEE—AND THE *INDIVIDUAL NEEDS* OF THE PATIENT DETERMINED THE TYPE, LEVEL, AND DIRECTION OF CARE, TREATMENT, DISCIPLINE, AND PUNISHMENT.

Petitioner told a psychologist for the Bureau of Prison "The Surgeon General (Dr. Antonia Novello) should put on her high heel cowgirl boots

(Footnote continued.)

29. On October 19, 1992 the staff at the Federal Prison at Rochester, Minnesota convened a panel hearing to attempt to forcibly medicate the Petitioner with MAD (Mind Altering Psychotropic, Antipsychotic, Neuroleptic Drugs).

It had already been determined by the staff to forcibly medicate the Petitioner with MAD, but the Petitioner had steadfastly refused to submit to the medication.

A notice was given to the Petitioner (See APPENDIX E) in which the reason given for forcibly medicating the Petitioner was to "*REDUCE DELUSIONAL THINKING.*" That was the sole reason given.

Dr. Norton and Dr. Kuckes had already submitted documents to the courts that the "delusions" which the Petitioner suffered were his religious beliefs regarding the segregation of the races and his political ideologies regarding Christianity v. Zionism. At the interview between Dr. Norton and this Petitioner, Dr. Norton confessed that he was unfamiliar with the words "ZIONIST" or "ZIONISM" and did not know their meaning. He admitted ignorance to any Jewish influence in the U.S. Congress (Called the Israeli Lobby), yet he determined that the Petitioner's beliefs about Zionism were merely "delusional thoughts."

Dr. Norton, Dr. Westrick, and Dr. Kuckes questioned the Petitioner about his religion (Identity Religious Movement). The central prison files of the Petitioner is replete with documentation that the Petitioner is a follower of the Christian Identity Religious Movement and that his beliefs were sincere, deeply rooted, and was shared by millions of others in the world's societies. (The

(Footnote continued.)
and tight levis and march into the office of the Director of the Federal Bureau of Prison and plant her boot on his chair and tell him 'Look here honcho . . . under the authority of 42 USC 250, I'm telling you to get your slave masters out of my institutions because me and my Public Health Service Staff is moving in and taking over.' "

Petitioner was placed in punitive segregation while at the Springfield Missouri Federal Prison simply for requesting that a "identity" minister be recruited from the free world to teach and to hold religious services for the identity members who were incarcerated. This issue is a part of another Petition before this Supreme Court in the case of *PHELPS V RISON*).

The staff members admitted that they based their diagnosis of the Petitioner from the information obtained from their "Bible" which is the *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (DSM-III-R) (Third Edition Revised) published by the American Psychiatric Association, 1987, from the Washington D.C. location. (ISBM 0-521-34509-X or 0-521-36755-6) at 1400 K Street NW. On page xxvi, the publishers offer a caution in the use of the manual and state that the material in the manual may not be relevant to accurate diagnosing and classification nor should the manual be used in legal determinations. The manual also states that SHARED CULTURAL BELIEFS are not to be used in the diagnosis or treatment of people as a mental disorder. This caution is so important to the publishers, that it was restated at page xxix. And at page 401 the publishers state:

> NEITHER DEVIANT BEHAVIOR (political, religious, or sexual) NOR CONFLICTS BETWEEN THE INDIVIDUAL AND SOCIETY ARE MENTAL DISORDERS (definition of mental disorder). (See APPENDIX E)

The staff did not seek to forcibly medicate the Petitioner for violent behavior or disruptive behavior, nor even a threat to the security and good order of the prison. They sought to forcibly medicate him solely for his religious beliefs, political ideologies, and philosophical theories and thoughts which were shared cultural beliefs shared by millions of others in the free world. They sought to force medicate the Petitioner solely because of the petitioner's thinking . . . his thoughts . . . his ideas . . . his

imagination . . . and not for his conduct or behavior. Such attempts are clearly proscribed by the Constitution and statutory provisions. The defendants have caused irreparable harm to the petitioner.

The staff has, with the approval of the Federal Bureau of Prisons, violated the Constitutional, statutory, civil, and common law rights of this Petitioner and has violated 18 USC 1091-1093.

In the October 19, 1992 panel hearing to determine if the petitioner would be forcibly medicated with dangerous MAD, Dr. Kuckes, Dr. Norton, and Dr. Giminez-Reyes asserted that the petitioner was "gravely disabled" because he was selective about with whom he would speak, and selective about with whom he would associate. They also asserted that because he was hostile toward the staff that he was "gravely disabled." They admitted that the petitioner had not exhibited any violent, or assaultive, or confrontational behavior.

The doctors defined "hostile" as refusing to speak and refusal to associate.

Dr. Kuckes made a sworn affidavit to the court (D Minn, 4th Div) that he told the Petitioner that he would not medicate the petitioner as long as the petitioner was not fighting with others. The petitioner believed and expected the doctor to keep his word, but the doctor order MAD when he discovered that the petitioner had filed a litigation in court against him, in spite of the petitioners history of passivity and docile behavior.

Dr. Gimines-Reyes defined Mental disease, Mental illness, Mental Defect, and Mental Disorder for the panel and said that the Petitioner did not suffer from a mental illness, not mental defect, nor mental disease, but did suffer from a mental disorder based upon the Petitioners religous and political beliefs. They also asserted that they used the DSM-III as their "bible." The petitioner directed their attention to the DSM-III definition of

MENTAL DISORDER and that the definition clearly revealed that "neither sexual deviancy, nor religious beliefs, nor political ideations or beliefs, nor the conflicts an individual may have between himself and society can be used to diagnose or classify a mental disorder." The doctors asserted that they were medicating the petitioner on the premise that the petitioners "may" or "could" or "might possibly" benefit from the medication. The Petitioner pointed to the decision of the 8th Circuit court of appeals in COCHRAN v DYSART, 8G 1992, 965 F2f 649 at 651, (giving then a xerox copy) that the court said . . . Dr. Gallinanes' report that psychotropic medication "will eventually help improve his reality testing" and that the drugs would reduce his "delusions of grandeur" and that "he is less agitated when on medication," or that he has previously "responded to treatment" on drugs does not justify forcibly medicating Cochran with potentially fatal psychotropic drugs under the *Harper* rules. The court even rejected the argument that the drugs would "control the symptoms of mental illness to such a level that it would allow a transfer to less restricted quarters and participation in more programs.

In the case of this petitioner, Dr. Kuckes said that he would medicate the petitioner because he wanted to release the petitioner to the community, but that the statute 18 USC 4243 and 4247 stated that the Petitioner MUST be medicated before release. (Petitioner submitted statements of witnesses attesting to the conversation). Dr. Kuckes admitted (with witnesses) that the petitioner was not mentally ill nor did the petitioner have a behavior problem.

Dr. Norton asserted that the court in *WASHINGTON v HARPER* meant that the Petitioner could be forcibly medicated because of the "danger" he may pose to the community in the future rather than just for the instant behavior. When the petitioner requested clarification, the Dr. stated that the Petitioner's religious and political beliefs posed a danger to the community and that, after conferring with the U.S.

prosecuting attorney in the case, they decided that forced medication was the best course of action to extinguish the religious beliefs of the petitioner. (The case is 7 years old).

The panel asserted that if the petitioner did not take the Haldol medication voluntarily (if it so ordered) that as an added punishment, they would triple the dosage (from 15 mg to 45 mg) and have a group of officers inject the petitioner with the drug, even though the mental condition of the Petitioner did not warrant such a dosage level.

Next, the Petitioner asserted that under the statutory provisions of 42 USC 250 the employees of the Bureau of Prisons (including the psychiatrists) could not prescribe nor administer drugs or treatment. ONLY THE PUBLIC HEALTH SERVICE COULD PROVIDE CARE AND TREATMENT TO THE PETITIONER. The employees of the prison had no jurisdiction or authority to provide care and treatment to the insanity acquittee.

Finally, the petitioner challenged the meaningfulness of the due process hearing. They did not allow the petitioner's attorney to attend, the staff representative of the petitioner read a magazine throughout the proceedings and did not ask questions, the person requesting the medication was absent and another doctor was substituted who had not interviewed or assessed the petitioner ... only a notation of proceedings was kept even though the petitioner requested that the hearing be tape recorded and that a copy be sent to his attorney of record in the issue.

Argument

This Supreme Court said in *Washington v. Harper,* 1990, 494 US 210, 108 LEd2d 178, 111 S Ct 1028 that a person could not be forcibly medicated with MAD unless the person was either gravely disabled or posed a [clear and present and imminent] threat to life or property (Petitioner in this case does not meet either criteria). The opinion was in regard to a *convicted prisoner,* not a civilly commit-

ted insanity acquittee. The convicted prisoner has more restricted rights than an insanity acquittee or a pre-trial detainee.

But even though pre-trial detainees have less rights than free world people, this court said in *Riggins v. Nevada,* 51 CrL 2091, 2099 on 5/18/92 (116 LEd2d 27 and 808 P2d 535) that even a pre-trial detainee could not be forcibly medicated with MAD.

The Federal Bureau of Prisons highest level of authority (the Central Office in Washington, D.C.) stated in an administrative remedy response to this Petitioner that this Petitioner had the right to refuse treatment . . . even *required* treatment (Copy of Response is found in Appendix D).

This court said in *Cruzan v. Missouri,* 1990, 111 LEd2d 224 (A civilly committed incompetent person) that the involuntarily committed person has the right to refuse any form of treatment even at the peril of their own death (even though this was a right to die case).

Concerning the rights of free world people, this court said in *Hodgeson v. Minnesota,* 1990, 111 LEd2d 344 that the government had no right or legitimate interest, abstracted from the person who was living that life, to impose laws, rules, and regulations upon that life without compelling *legitimate* interests and concerns. The court said that the government could not impose such treatment merely just to satisfy established practices and procedures (such as is done in the prison systems).

The U.S. Court of Appeals for the 8th Circuit agreed with this principle and ruled in *Cochran v. Dysart,* 8C 1992, 956 F2d 649 that a person involuntarily committed could not be forcibly medicated on the mere assertion by a mental health professional that the person *may,* or *would possibly,* or *could,* or *potentially* benefit from MAD medication. The court said that the professional must show a substantial need to forcibly medicate a civilly committed person, and that need must meet the "gravely disabled" [or imminent threat and danger] principles of *Washington* (*ante supra*).

This Supreme Court said in *Youngberg v. Romeo,* 1982, 457 US 307, 73 LEd2d 28, 102 S Ct 2452 that the civilly committed have more rights than a convicted prisoner and must be treated better than convicted prisoners, and be given more consideration than convicted prisoners. This decision fits squarely with the intent of Congress in the establishment of 42 USC 250 giving the *Surgeon General* (and not the Federal Bureau of Prisons) authority to care for and give treatment to the insanity acquittee. The court continued to speak in *Youngberg* saying that the decision to treat a person must be based upon competent professional judgment.

This Petitioner has shown that not only does the Psychiatrist and Psychologists have no authority to treat the petitioner,[15] but that they were very unprofessional in their actions. They not only ordered the MAD to modify or to destroy the Petitioners' religious beliefs (which they found personally offensive), but they submitted perjured affidavits to the courts and perjured testimony to the courts (which the lower courts refused to admit or to address). Not only were they personally unprofessional, but they conspired together in opposite to the judgment of their employer (BCP Central office) to force the Petitioner to take treatment (which their employer stated that the Petitioner had a right to refuse). This right to refuse treatment **at any time** is also granted in the Federal Bureau of Prison Policy statement 6000.602 consent form (attachment 2). The central office response and attachment copy is found in Appendix D). This is clear evidence of the bias of the prison doctors and is convincing that the decision to force medicate the Petitioner was a personal decision to alter, modify, or to destroy the Petitioners religious beliefs (and to prevent further litigation).

The Trial Court Judge and the Trial Prosecutor denied the release of the Petitioner because the Petitioner did not reveal information about his past life which such information was completely unrelated to the criminal charges. The prosecutor and the judge asserted that the Petitioner was required to give that information before he could be released. The Doctors at the prison interpreted this to mean that the Petitioner was to be forcibly medicated with MAD to reveal that information and moved to prescribe and administer the MAD.

This court said in *McNeil v. Director of Patuxent Institution,* 1972, 407 US 245, 32 LEd2d 719, 92 S Ct 2083, that a civilly committed person has the right not to speak to a psychiatrist or psychologist.

The courts have said that the field of medicine is within the judicial competence of the courts whenever the actions of a doctor is measured against the rights of another person, and that medical experts do not enjoy unfettered discretion to force medicate a person with MAD (*Project Release v. Provost,* EDNY 1982, 531 F Supp 1298 and 2C 1983, 722 F2d 960). The court said in *Rogers v. Okin,* 1C 1980, 634 F2d 650 and 478 F2d 1342 that forced medication which is powerful enough to seize and immobilize the mind and to alter the mental processes of thought, and the capacity to produce that thought, is "restraint" and "unreasonable search and seizure" subject to the fourth and fifth amendment protections. The court said in *Youngberg* (*ante supra*) that a person has the right to be left alone in their beliefs, thoughts, emotions, and sensations and that the right to privacy includes privacy of the mind, and such privacy survives involuntary commitment. The court said in *Andrews v. Ballard,* SD Tex 1980, 498 F Supp 1038 that the right to refuse treatment is inalienable, and privacy of the mind is protected by the 5th amendment and 9th amendment. *Andrews* said that even foolish, unreasonable, absurd, and delusional thoughts and ideas are protected by the U.S. Constitution; and in *Davis v. Hubbard,* ND Ohio 1980, 506 F Supp 915, the court said that drugging a person for the mere convenience of the staff (or to label the action as a "treatment" when it is not) does not insulate the act from constitutional scrutiny, and such acts are unconstitutional.

The court said in *Anderson v. Covington,* 1981, 483 US 635, 97 LEd2d 523, 197 S Ct 3034 that a physician cannot substitute his judgment for that of his patient; and a court said that a patient's rights need not give way to professional medical judgment *Walters v. Western State Hospital,* 10C 1988, 864 F2d 695; and that a physician in a penal institution owes the patient the same standard of care to prisoners that he would give to private free world patients (*D.C. v. Mitchell,* DC App 1987, 533 A2d 629, 864 F2d 695).

The courts have said that the purpose of a restraining order is to maintain the *status quo* and to prevent the destruction of a persons' rights (*Webb v. Board of Education of the City of Chicago,* DC ILL 1963, 223 F Supp 466) and to prevent irreparable injury (*Pharmaceutical Manufacturers Association v. Weinberger,* DCDC 1975, 401 F Supp 444). The Petitioner showed to the District Court that he was in a clear and present and imminent threat and danger of irreparable harm and injury but the court refused to rule on the TRO for almost one year. Petitioner showed that his medical record revealed that he had suffered adverse effect from such drugs, but the court refused to accept the medical records as evidence. (Also refusing to recognize the perjured affidavits and statements of the Medical mental health professionals).

The respondents asserted that the Petitioner should have exhausted his administrative remedies, but the petitioner asserted that he was not required to exhaust administrative remedies because his life was in imminent danger and that he was falsely imprisoned and, therefore, the rules and regulations established for those *accused* of crimes and for those *convicted* of crimes did not apply to those who are *acquitted* of crimes (even though they are in prison). (Since that time . . . the remedy has been exhausted). The respondents asserted that because the Petitioner was "dangerous" that he could be forcibly medicated with MAD (Magistrates report). They misread *Washington*. The court said in *Washington* that the person had to be *violent* to be force medicated . . . not *"dangerous."* The petitioner showed that the psychologist (Dr. Norton) falsified his report to the court in regard to the issue of dangerousness. When comparing the videotape interview of the Petitioner with Dr. Norton (which was submitted to the District Court for the Northern District of California, case 85-0899) with the affidavit of Dr. Norton, submitted to the court in Minnesota, the perjury of the affidavit is clearly evident, and such was presented to the court which accepted the perjured affidavit.

Conclusion

The mental health professionals did not exercise proper ethical judgment in attempting to force medicate the Petitioner. Their purpose was solely in retaliation against the petitioners religious beliefs and to hinder further litigation efforts against them. They placed the Petitioner in grave peril and danger of irreparable harm and injury and the court ignored the plight of the Petitioner.

The government usurped its authority in attempting to force medicate a person merely to gather information from that person' past which had no relationship to the crime charged or to the nature of the crime. The mental health professionals showed that they were merely living on the *edge* of intelligence and not being intelligent in their decision making.

It did not matter that they could not offer any explanation as to how the drugs work, nor can they explain the etiology of the adverse effects; their only concerns are the results . . . not the methods employed nor the damage which comes in obtaining those results. They have thrown away the wisdom of the ancients to appease the government.

The mind is the sanctity of the person and the meeting place of all sensations and relationships and is protected by the U.S. Constitution. The psychiatrist not only have the knowledge to use the drugs effectively to reduce resistance or to break the will of the person, but their expertise in the use of drugs allows them to conceal their actions and to escape judicial detection. When once in our history such acts of forcing a person to be medicated with MAD to modify or to extinguish their religious beliefs, political ideologies, or philosophical thoughts and theories was considered barbaric and savage to a humane civilized society, the government, in enlisting the aid of the medical profession to accommodate and to effect their wishes have applied that thin veneer of legitimacy for physicians to act in the belief that what they do is not barbaric inhumane torture, but is merely a "harsh," but essential form of specialized "treatment" for what the government deems dangerous patients. But the "dangerousness" is determined by the government and not by the knowl-

edge and skills of the mental health professional. As in the case of this petitioner, the trial judge and the trial prosecutor determines that the Petitioner is "dangerous" or not dangerous and not the knowledge of the physician nor psychiatric standards. The governments definition of who and who is not dangerous is merely a cloak to destroy people who may, or may not, be participating in legitimate political dissent. When the government gives a mental health professional a "license" to administer such acts in the guise of "treatment" to whomever the government has determined to be "dangerous," then that thin veneer of legitimacy becomes thickened to conceal the "treatment" by the medical physician and converts the barbaric torture into a more acceptable "professional judgment," but the goal is the same: to modify or to extinguish that religious or political view, through the infliction of pain, suffering, or the creation of fear, of the people whom the government has determined to be "dangerous."

What is now classified as "dangerous" to the government would have no credibility in society except by the government enlisting the aid of the medical profession to "overseer" the "treatment" to break the will of the person, or to kill the person if the person does not conform to the governments expectations. This is the case of this Petitioner.

The judge of the trial court denied the release of this Petitioner in August of 1992 on the ground that the petitioners religious beliefs, policial ideations, and philosophical thoughts and theories made the petitioner too dangerous to be released. The judge also said that the religious beliefs of the petitioner was evidence of a mental illness, but the judge disregarded the fact that more than 20 million Americans have the same shared cultural belief. In his order for recommitment, the judge assigned all of his reasons to the religion of the petitioner (except for about six lines out of the pages of the documents he wrote).

The Petitioner has been falsely imprisoned in a federal prison when he has been acquitted of criminal wrong doing and because of the false imprisonment he has suffered abuse and mistreatment.

If he had been properly placed into the custody of the Surgeon General, he would not have suffered such abuse and mistreatment. If the Public Health Service were his custodians, and not the Federal Bureau of Prisons, he would have received proper, adequate, and professional mental health care and treatment, with no penological interests and objectives, in accordance with the intent of Congress in federal statutes 18 USC 4243 and 4247 in mandating that the insanity acquittee be placed in a "Hospital" for care, treatment, healing, and recovery, and rehabilitation.

The federal statute 42 USC 250 mandates that the Surgeon General provide, supervise, and direct the care and treatment for the insanity acquittee as well as for federal prisoners.

Around the perimeter of this prison is a double row of fences separated by about 10 feet of space. The only authority given to the federal Bureau of Prisons (for Medical Facilities) is BETWEEN those two rows of fences. Their sole function is to prevent escape. The territory *inside* the perimeter of the fences is the total domain of the surgeon general and the Public health service. The law has been perverted. The doctors and medical staff employed by the Federal Bureau of Prisons have no authority to prescribe medicine to this petitioner. Only the Public Health Service can do that, and Dr. Norton and Dr. Kuckes are prison employees.

For the reasons and causes stated herein, this court should render an opinion most favorable to this petitioner so that the ends of justice will be met, and to prevent a miscarriage of justice, and in the best interest of Justice.

Respectfully submitted,

COY R. PHELPS, 78872-011
Petitioner *Pro Se*
P. O. Box 4600
Rochester, Minnesota
55903-4600

Certificate of Service.

See the last page of the Appendices.

APPENDIX A—Order of U.S. District Court.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA—FOURTH DIVISION

COY RAY PHELPS,

Petitioner,

v.

PETER CARLSON, RUTH WESTRICK and WALTER KUCKAS,

Respondents.

Civil 4-91-843

Coy Ray Phelps, #78872-011, FMC, P.O. Box 4600, Rochester, MN 55903-4600, *pro se.*

Thomas B. Heffelfinger, United States Attorney, and Friedrich A. Siekert, Assistant U.S. Attorney, 234 U.S. Courthouse, Minneapolis, MN 55401, for respondents.

This matter is before the Court on Petitioner's objections to the April 24, 1992 report and recommendation of the United States Magistrate Judge.

Based on the Court's independent *de novo* determination of the Magistrate Judge's report, findings and recommendation, and the Court finding itself in agreement with the report and recommendation,

IT IS ORDERED that:

1. the objections of the petitioner to the report and recommendation are overruled;

2. the Court adopts the report and recommendation; and

3. petitioner's motion for temporary restraining order and writ of habeas corpus is denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

JUDGE HARRY H. MACLAUGHLIN
United States District Court

DATED: August 12, 1992

FILED AUG 12 1992
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTERED AUG 12 1992
DEPUTY CLERK'S INITIALS

APPENDIX A (continued)—Magistrate's Report and Recommendation.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA—FOURTH DIVISION

COY RAY PHELPS,

Petitioner,

v.

PETER M. CARLSON, Warden of the Federal Medical Center, *et al.*, RUTH WESTRICK, Chief Mental Health Director, and WALTER KUCKES, Staff Psychiatrist,

Respondents.

Case No. CV 4-91-843

This matter is before the undersigned United States Magistrate on petitioner's application for habeas corpus and for a temporary restraining order pursuant to 28 U.S.C. §§ 1361, 1651, 1657, 2241 and 2284. For the reasons stated below, petitioner's application for writ of habeas corpus and for a temporary restraining order should be denied.

I. PROCEDURAL BACKGROUND AND FACTS.

Petitioner Coy Ray Phelps is presently confined at the Federal Medical Center (FMC) at Rochester, Minnesota pursuant to a court order committing him to the custody of the Attorney General under 18 U.S.C. § 4243(e).

On October 3, 1985, petitioner was charged with fourteen violations of federal law including illegally making a firearm, illegally possessing a firearm, attempting to damage an institution receiving federal funds, and attempting to damage property used in interstate commerce.[1] On July 31, 1986, a jury found petitioner not guilty by reason of insanity for the charge of manufacturing and placing pipe bombs at five San Francisco locations in 1985. *See* Govt. Ex. 1 attachment. Petitioner was then committed to the custody of the Attorney General under the provisions of 18 U.S.C. § 4243(e). Prior to petitioner's current confinement at the Federal Medical Center, Rochester, Minnesota, petitioner was confined for treatment at the Federal Medical Center, Springfield, Missouri, and Terminal Island, California.

Petitioner alleges that he was initially administered anti-psychotic medications at the federal prison in Terminal Island, California in 1986. Petition for Priority Temporary Restraining Order dated October 12, 1991 ("TRO") at 3. At that time, petitioner claims he was given only low dosages of drugs to enable him to sleep because the medical team determined that anti-psychotic medications were contraindicated. *Id.*

Petitioner states that he was given the same medication at the same dosage level after his transfer to the federal prison located in Springfield, Missouri. TRO at 3. During this

[1]The 1985 bombings for which petitioner was charged involved buildings including the Black Studies Department at San Francisco State University, a rabbi's residence, and a synagogue. *See* Govt. Ex. 4 at 6.

period of confinement, petitioner states that he began to have progressive and increasing adverse reactions to the medication and another drug was given in an attempt to combat the side effects. Petitioner was allergic to the drug and immediately, within two hours, became disoriented, confused, hostile, aggressive, hallucinatory and detached from reality. Petitioner was placed in seclusion and all medications were withdrawn. The doctors concluded that plaintiff had become allergic to the anti-psychotic medication. According to petitioner, the doctors concluded that the medication was having reverse affects: instead of combatting psychotic behavior, it caused psychotic behavior. TRO at 3. Petitioner remained in a disoriented state for three months, until the drying out period was completed. During this time petitioner was carefully monitored. Petitioner claims he remained stablized and did not manifest any psychotic behavior. Petitioner states that he did not receive any anti-psychotic medications for a period of three years after that incident. Petitioner also states that in treatment of standard physical ailments (gall stones, arthritis, etc.), doctors discovered that even these types of medications produced indications of psychological imbalance, so that all medications were discontinued. TRO at 4.

Upon arrival at FMC Rochester, Dr. Kuckes evaluated petitioner's mental status and determined that no medication nor secure seclusion was necessary. TRO at 4. Dr. Kuckes ordered petitioner to be placed in open population. Subsequently, petitioner informed Nurse Pam Aronburg that he was an avowed white racist as a religious preference. Petitioner also stated that his criminal charges were racially motivated, and that his religious group did those type of actions. TRO at 4. Petitioner also stated that his history was of defensive violence, but no initiated confrontational violence. Nurse Aronberg, based on these statements, ordered

petitioner to be placed into seclusion. The next day, petitioner was interviewed by a psychiatrist, who ordered his release to a semi-open unit. TRO at 5.

Several days later, petitioner became involved in a confrontation with what petitioner termed a "mentally disturbed aggressive negro." *Id.* Petitioner admits to making "one" racial slur against him. Petitioner claims that the staff overreacted, threatening him with punishment, seclusion, and forced medication if another racial remark was ever made. *Id.*

In an interview with Dr. Kuckes, petitioner's assigned psychiatrist, petitioner made racial references during the conversation. TRO at 5. Dr. Kuckes became angry, and told petitioner never to use the word "nigger," even in a therapy session. Petitioner's response was "how can there be therapy without free expression?" Petitioner went on to inform Dr. Kuckes that his racial beliefs were based in his religion. Dr. Kuckes informed petitioner that "racial intolerance is a clear symptom of psychosis, even if based upon religion." TRO at 6. Petitioner claims that Dr. Kuckes threatened him with forced medication if he continued his views on race. Petitioner informed Dr. Kuckes of the contraindications petitioner had experienced with any type of medication, and Dr. Kuckes, in petitioner's view, was unconcerned with his medical history. TRO at 6.

II. CLAIMS PRESENTED.

Petitioner seeks a temporary restraining order prohibiting respondents from forcefully medicating petitioner. In his writ for habeas corpus, petitioner seeks:

1. An order to respondents that they must produce petitioner before this judicial court for the court's personal

judicial examination of petitioner before the administration of drugs;

2. A declaration as to the status of civil commitants and convicted prisoners, differentiating the rights, privileges, protections, safeguards and differences in care and treatment;

3. To be allowed ample opportunity to be interviewed, observed, tested, and evaluated by private mental health professionals at petitioner's expense after written notice is given to petitioner of intent to force medicate; and

4. A ruling on *Washington v. Harper,* 108 L.Ed.2d 178-221 as to its applicability to unconvicted civil federal commitants.

III. DISCUSSION OF LAW.

For the reasons stated below, the undersigned recommends that petitioner's application for writ of habeas corpus, and application for a temporary restraining order, be denied.

A. Application for Temporary Restraining Order.

Petitioner has not met the elements necessary to warrant a grant for preliminary injunctive relief and has not established that he has any probability of success on the merits of the claims presented in his petition. The factors for preliminary injunctive relief are: (1) threat of irreparable harm to the movant; (2) balance between that harm and the injury

granting the injunction will inflict on the other parties; (3) probability of succeses on the merits by movant; and (4) public interest. *Dataphase Systems, Inc. v. C.L. Systems, Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). The Eighth Circuit stated that the question is whether justice requires the courts' intervention to preserve the *status quo* until the merits are determined. No one factor is determinative to the courts consideration. If the possibility of harm to the public or other parties outweighs possibility of irreparable injury to movant, that the movant has a heavier burden to show likelihood of prevailing on the merits. *Id.*

The first factor is whether petitioner will be irreparably harmed if the request for a temporary restraining order is denied. Petitioner alleges that Dr. Kuckes has threatened him with forced medication, and in his traverse, states that Dr. Kuckes "wrote a medical order instructing the nursing staff to administer the neuroleptic drug Thorazine to petitioner once daily". Petitioner's Traverse filed December 3, 1991 ("TRAV") at 6 and 19. Doctors Norton and Kuckes have both filed declarations stating that petitioner is not currently being medicated. Declaration of Walter Kuckes dated November 8, 1991 at ¶ 4, and Declaration of Steven Norton dated November 1991 at ¶ 7. Dr. Norton also states that petitioners records from the Medical Center for Federal Prisoners at Springfield, Missouri state that petitioner was treated with anti-psychotic and anti-depressant medication with no adverse side effects and with beneficial results. Declaration of Steven Norton at ¶ 4. Petitioner has not proven whether any harm exists here to petitioner. There is also a fact question of whether the possible harm is irreparable, given Dr. Norton's statement that petitioner's medical records do not indicate medical contraindications. On the facts presented to the court, there is no evidence of irreparable harm to petitioner by the denial of petitioner's motion.

The second factor is the balance of petitioner's alleged harm and the injury defendant will sustain by grant of the motion. Even if petitioner had establish that there would be irreparable harm, respondents need to maintain stability at the Federal Medical Center outweighs the potential harm to the petitioner. The procedure used to determine whether administration of anti-psychotic or psychotropic medications is warranted is specified by institution policy. *See* Respondent's Exhibit 4, Federal Bureau of Prisons (BOP) Operation Memorandum Number 59-91 (6000). The BOP institution policy follows *Washington v. Harper,* 494 U.S. 210 (1990) (a dangerous inmate may be medicated against his will, if he is dangerous to himself or others and the treatment is in the inmate's best medical interest). Dr. Norton cited petitioner as admitting he was dangerous because of his belief system. Declaration of Steven Norton at ¶6. Dr. Kuckes stated that petitioner was informed of the option of forced medication as a consequence of his continued violent disruptive behavior and fighting with other inmates. Declaration of Walter Kuckes at ¶ 4 and 5. Petitioner states in his traverse that he quiet, well-mannered and reclusive, but in his application for a temporary restraining order, states that he was involved in an incident with an African-American in which he made a racial slur. TRAV at 6, TRO at 5. Petitioner has failed to prove that his alleged harm outweighs the potential harm to the defendants.

The third factor is the possibility of success on the merits of the underlying claim. Petitioner has brought a writ for habeas corpus for claims of which he failed to exhaust his administrative remedies. Petitioner will not succeed on the merits of his claims as his writ for habeas corpus should be dismissed.

Consideration of public interest is the last factor. It would be against public interest for the prison to be restricted from

performing its duties by allowing petitioner to continue in disruptive and potentially violent behavior. Prison officials need to be able to efficiently administrate the prison, and this includes treatment of petitioner's mental illness.

In conclusion, petitioner has not shown the required elements to warrant issuance of a temporary restraining order against respondents.

B. Petitioner's Application for Writ of Habeas Corpus.

Petitioner has failed to exhaust his administrative remedies with respect to his claims. As such, the undersigned recommends that petitioner's application be dismissed.

A federal prisoner is required to exhaust available administrative remedies within the correctional system prior to seeking habeas corpus relief in the federal courts. *Leighnor v. Turner,* 884 F.2d 385, 387-88 (8th Cir. 1989); *Merki v. Sullivan,* 853 F.2d 599 (8th Cir. 1988); *Willis v. Ciccone,* 506 F.2d 1011 (8th Cir. 1974). One purpose of the exhaustion requirement is to allow administrative agencies to correct their own errors so as to moot judicial controversies. *Parisi v. Davidson,* 405 U.S. 34, 37 (1972). As the Eighth Circuit held in *Willis*:

> When proper grievance procedures exist, their utilization benefits the prisoners, the prison authorities and the courts. If such procedures are given a fair chance to succeed, no only will the prisoner receive expeditious relief when he is entitled to it, the administrative burden processing federal suits places upon prison authorities will greatly decrease as well.

506 F.2d at 1015. *See also, Mason v. Ciccone*, 531 F.2d 867, 869-870 (8th Cir. 1976).

The BOP has established an administrative remedy procedure through which a federal prisoner may challenge any aspect of his imprisonment. *See* 28 C.F.R. § 542.10, *et seq.* The inmate may pursue his claims at three levels: (1) The Warden (BP-9); (2) The Regional Director (BP-10); and (3) The Central Office (BP-11). *See* 28 C.F.R. § 542.13-15. A decision by the Bureau of Prisons is not final and hence reviewable until relief has been denied by the Central Office. *See* 28 C.F.R. § 542.15.

Respondents have submitted the declaration of James M. Ralph, Administrator of National Inmate Appeals, Washington D.C., stating that petitioner has not appealed his claims concerning the administration of anti-psychotic and psychotropic medications at FMC Rochester. Declaration of James M. Ralph dated November 11, 1991 at ¶ 3. Petitioner argues that he should be excused from exhausting his administrative remedies. He notes that he had filed over 12 formal complaints. TRAV at 18. The undersigned finds that given petitioner's familiarity with the legal system,[2] the requirement of exhaustion should not be waived.

[2]While confined at FMC Springfield, petitioner brought a habeas petition, Civ. No. 87-1556, on the grounds that 18 U.S.C. §§ 4243 and 4247 are unconstitutionally vague and overbroad. *See Phelps v. United States*, 831 F.2d 897 (9th Cir. 1987).

Petitioner filed a habeas corpus action in the Western District of Missouri, Southern Division, CIV 91-3242, which was dismissed as frivolous on November 5, 1991.

Another Ninth Circuit decision involving petitioner has been recently published, *United States v. Phelps*, 955 F.2d 1258 (9th Cir. 1992).

Petitioner presently has three cases before this court, the instant habeas corpus action and petition requesting a temporary restraining order, CIV 4-91-843, a second habeas corpus action, CIV 4-91-887, and a section 1983 prisoner civil rights action, CIV 4-91-888.

IV. RECOMMENDATION.

Accordingly, based on the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED THAT:

Petitioner's motion for Temporary Restraining Order and for writ of habeas corpus be DENIED.

DATED: April 24, 1992

FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this report and recommendation by filing with the Clerk of Court and serving all parties, within ten days after being served with a copy thereof, written objections which specifically identify the portions of the proposed findings, recommendations or report to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days

APPENDIX A (continued)—Notice of Appeal.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA—FOURTH DIVISION

COY RAY PHELPS, 78872-011

Appellant-Petitioner

v

U. S. FEDERAL GOVERNMENT, *et al.*

Appellees-Respondents

Civil Case: 4-9-843

NOTICE is hereby given that the Appellant-Petitioner, *COY RAY PHELPS, 78872-011*, in the above captioned case, hereby appeals to the United States Court of Appeals for the Eighth Circuit form the final judgment and order of the Honorable Harry H. MacLaughlin issued on 8-12-92

which such order disposed of all the claims, issues, and points of issues regarding all partied concerned.

This appeal is taken pursuant to the provisions of 28 USC 1291 and 2253.

DATE: 8-17-92

COY R. PHELPS, 78872-011
P.O. Box 4600
Rochester, Minnesota
55903-4600

In Pro Se

Received by Mail
Aug 20 1992
Clerk US Dist Court
Minneapolis MN

Filed August 20, 1992
FRANCIS E. DOSAL, CLERK
DEPUTY CLERK'S INITIALS FED

APPENDIX A (continued)—Judgment of U.S. Court of Appeals, 8th Circuit.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 92-3085MNMI

COY RAY PHELPS,

Appellant,

v.

PETER CARLSON; RUTH WESTRICK; WALTER KUCKAS,

Appellees.

Appeal from the United States District Court for the District of Minneapolis

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JUDGMENT

Appellant's motion for appointment of counsel has been considered by the court and is hereby denied. The court has reviewed the original file of the United States District Court

for the District of Minnesota and the appeal is hereby dismissed. See Eighth Circuit Rule 47A.

October 5, 1992

Order Entered at the Direction of the Court:
MICHAEL E. GENS
Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B—Federal Statute 42 USC 10841

SUBCHAPTER II—RESTATMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

§ 10841. Restatement of Bill of Rights

It is the sense of the Congress that, as previously stated in title V of the Mental Health Systems Act [42 U.S.C.A. § 9501 *et seq.*], each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require, and that in making such review and revision, States should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary[1] consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to

treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) The reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the

information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) the right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person;

(iii) system established under subchapter I of this chapter to protect and advocate the rights of individuals and mental illness; and

(iv) qualified advocate;

for the purpose of receiving assistance to understand; exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's

rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guard-

ian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph(1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

APPENDIX B (continued)—Prison Policy 6000.602.

U.S. Department of Justice
Federal Prison System
Rochester, MN 55904

Number : RCH 6000.602

Date : October 4, 1991

Subject : VOLUNTARY ADMISSION TO INPATIENT (MH) AND TREATMENT WITH PSYCHOTROPIC MEDICATIONS

Institution Supplement

1. *PURPOSE.* The purpose of this protocol is to outline the process of voluntary admission to Inpatient Mental Health and voluntary treatment with psychotropic medications.

2. *DIRECTIVES AFFECTED.*

   a. Accreditation Manual for Hospitals, Volume I, 1991, is referenced.

   b. Health Service Manual, 6000.3 Federal Bureau of Prisons, Sections 6600 through 6621, Psychiatric Services.

3. *PROCEDURES.* An inmate who meets the following criteria will be approached for voluntary admission to Inpatient Mental Health if the inmate:

    1. Suffers from a mental illness (Axis I, DSM III-R).

    2. Unable to be treated or managed in a parent institution.

    3. Does not suffer from a mental illness but can benefit from a period of extended observation and evaluation.

    The inmate will meet with the Evaluation Unit Treatment Team to discuss the results of the assessment, the Treatment Team's recommendations for treatment, and voluntary admission. If the inmate agrees to voluntary admission, the treating psychiatrist/psychologist will make a formal assessment of the inmate's competency to consent, obtain the inmate's consent and document the results in a progress note. The Treatment Team on the Inpatient Mental Health Unit will be notified of the inmate's voluntary admission. The Evaluation Unit Treatment Team will contact and provide information to the Inpatient Mental Health Treatment Team to ensure continuation of care.

a. Prior to admitting a sentenced inmate to the mental health treatment unit on a voluntary basis, the Treatment Team must assess the inmate's ability to give informed consent to such admission. In order to make this assessment, appropriate staff must determine whether the inmate understands the reasons for admission, the recommended treatment, his or her right to object to inpatient treatment at any time and the means by which he or she may voice such objections. The assessment of the inmate's ability to give informed consent will be documented by appropriate staff in the individual's medical record. This documentation shall be in addition to the Consent to Admission form (see Attachment A).

b. If an inmate is to receive psychotropic medications voluntarily, his or her informed consent must be obtained and his or her ability to give such consent must be documented in the medical record by appropriate staff. This includes documentation that, prior to giving his written consent, the inmate understood why the medication was deemed necessary, how the medication could improve his or her condition, the possible side effects of the medication, the consequences of not taking the medication, any alternative forms of treatment and the risks of those alternatives. A sentenced inmate who has not been committed for hospitalization and treatment, and who is not able to either consent to admission or to medication, will be subject

to involuntary judicial commitment procedures. Once the inmate is committed by a court for hospitalization and treatment, the inmate is subject to the due process procedures prior to the involuntary administration of treatment.

4. *OFFICE OF PRIMARY INTEREST.* Psychology and Psychiatry.

PETER M. CARLSON
Warden

RCH 6000.602
VOLUNTARY ADMISSION TO MH AND
CONSENT TO TREATMENT WITH
PSYCHOTROPIC MEDICATIONS
Attachment A

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

Federal Medical Center
Rochester, Minnesota

CONSENT TO ADMISSION FOR MENTAL HEALTH TREATMENT

This is to notify you that as a result of your evaluation we believe you need treatment in the psychiatric hospital of this institution. We believe you have a mental illness and need this kind of treatment.

The proposed treatment would include different types of psychotherapy and may include psychiatric medications. However, you will not be given any psychiatric medications without your knowledge and consent, unless an emergency arises.

If you agree, you will be admitted now for psychiatric treatment. You will be a voluntary patient. *You do have a right to refuse this treatment now or at any time in the future.* If you chose to do so, you should notify the Warden in writing of your wish to refuse treatment. Staff will help you, if you so request, in preparing your written refusal.

If you refuse treatment and clinical staff believe that such treatment is still necessary, we will request that the U.S. Attorney file a motion in the U.S. District Court for involuntary commitment. Before such commitment could occur, you would have a court hearing with an attorney representing you.

By signing this form, I acknowledge that I have received a copy of this consent and I understand my rights and choices regarding psychiatric hospitalization. I hereby consent to inpatient hospitalization for psychiatric treatment.

_____ _____

Inmate Signature Date

FOR STAFF USE ONLY

This inmate ____ is ____ is not competent to give informed consent for voluntary admission to the Mental Health Unit.

This assessment is based on the following:

_____ _____

Staff Signature/Printed Name/Title Date

LOCAL REPRODUCTION AUTHORIZED

APPENDIX B (continued)—Prison Policy 6000. (59-91).

U.S. Department of Justice
Federal Bureau of Prisons

Number 59-91 (6000)

Date March 12, 1991

Subject Involuntary Psychiatric Treatment and Medication Procedures and Voluntary Admission and Use of Psychotropic Medications

Cancellation Date December 31, 1991

Operations Memorandum

1. *PURPOSE*. To transmit guidelines for involuntary psychiatric treatment and medication procedures and voluntary admission and use of psychotropic medications.

2. *BACKGROUND*. When the new Health Services Manual was issued in March of 1990 the sections on involuntary psychiatric treatment and medication procedures and voluntary admission and use of psychotropic medications were not issued at that time. Since then these sections have been prepared and reviewed by Wardens and psychiatric staff at all the Medical Referral Centers. After publication of some of these procedures in the Federal Register for inclusion in the Code of Federal Regulations, these two sections will be incorporated into the Health Services Manual.

3. *ACTION*. Sections 6620 with attachments and 6621 of the Psychiatric Chapter of the Health Services Manual will be effective immediately. The Health Services Administrator/Chief of Health Programs shall ensure that a copy is circulated to all appropriate staff.

WALLACE H. CHENEY
General Counsel
Bureau of Prisons

KENNETH P. MORITSUGU, M.D., M.P.H.
Assistant Surgeon General
Medical Director, Bureau of Prisons

59-91 (6000)
March 12, 1991

Page 1

6620. Involuntary Psychiatric Treatment and Medication Procedures.

1. Introduction. Title 18 U.S.C. Section 4241-4247 and federal court decisions require that certain procedures be followed prior to the involuntary administration of psychiatric treatment and medication to persons in the custody of the Attorney General. Court commitment for hospitalization provides the judicial due process hearing and no further court authorization is needed for admission or treatment decisions. In order to administer psychotropic medication on an involuntary basis further in-house, administrative due process procedures, as specified below, must be provided to the

inmate. Absent an emergency situation [see Sections 6605.4 and 6616.2(d)], the procedures outlined herein must be followed after a person is committed for hospitalization and treatment prior to administering involuntary medication.

2. Title 18 U.S.C. section 4241(d) provides for the hospitalization and treatment of individuals found to be suffering from a mental disease or defect rendering them mentally incompetent to stand trial. The trial court has already provided the inmate with a judicial due process hearing and no further court authorization is needed prior to administering involuntary medication. However, in order to ensure that professional judgment is exercised, an administrative due process hearing conforming to the requirements of section 7, must precede the administration of involuntary treatment.

   At this hearing, conducted by a psychiatrist in accordance with procedures, a determination must be made that psychotropic medication is necessary in order to attempt to make the individual competent for trial or is necessary because the individual is dangerous to self or others, is gravely disabled, or is unable to function in the open population of a mental health referral center.

3. Title 18, U.S.C. sections 4243 and 4246 provide for the hospitalization and treatment of persons found not guilty only by reason of insanity and of a person due for release but suffering from a mental disease or defect.

Hospitalization follows a court determination that the individual cannot be released from custody because he or she is mentally ill and dangerous due to the mental illness and because there is no suitable state placement. After commitment, psychotropic medication may be involuntarily administered if the individual does not give informed consent, or is incompetent to give informed consent, if a determination is made at the hearing (specified in section 7), that medication is necessary to treat the mental illness which causes the individual to be dangerous upon release or because the individual is dangerous to self or others, is gravely disabled, or is unable to function in the open population of a mental health referral center.

4. Title 18 U.S.C. sections 4244 and 4245 provide for the hospitalization and treatment of convicted and imprisoned persons suffering from a mental disease or defect. Hospitalization follows a court determination that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. After commitment, psychotropic medication may be involuntarily administered if the individual does not give informed consent, or is not competent to give informed consent, and if a determination is made at the hearing (specified in Section 7), that the individual needs medication to treat the mental illness and the individual is dangerous to self or others, or is gravely

disabled. With respect to a 18 U.S.C. 4244(d) commitment, staff may also involuntarily medicate an individual who is unable to adequately function in the open population of a mental health referral center. With respect to a 18 U.S.C. 4245 commitment, staff may also involuntarily medicate an individual who is unable to adequately function in the open population of a regular prison.

5. Title 18 U.S.C. sections 4242-4247 to *not* apply to military prisoners, unsentenced Immigration and Naturalization Service (INS) detainees, state, or territorial prisoners, and District of Columbia Code offenders. Military prisoners and INS detainees will be provided a *Vitek*-type hearing within the guidelines of section 6616. (Note: The military must provide the *Vitek* hearing for military prisoners.) For procedures regarding State, Territorial and D.C. Code offenders, see Section 6617.

6. Emergency Care. See section 6605.4.

7. Administrative Due Process Hearing Procedures. When an inmate will not/cannot provide written informed consent for psychotropic medication, the inmate will be scheduled for an administrative hearing. Absent an emergency, the inmate will not be medicated prior to the hearing. At the hearing, the inmate will be given the following procedural protections:

(a) 24-hour advance written notice of the date, time, place and purpose of the hearing. The notice shall advise the inmate that, as a result of his specific diagnosis and the court commitment, psychotropic medication has been proposed. The notice should also include the reasons for the medication proposal.

(b) The notice shall state that the inmate has a right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative, or by the person conducting the hearing. Witnesses should be called if they have information relevant to the inmate's mental condition and/or need for medication, and if they are reasonably available. Witnesses who only have repetitive information need not be called.

(c) The staff representative should be a person who is familiar with mental health patients based on education or experience. The staff representative should be unbiased and able to act in the best interests of the inmate. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, the institution mental health division administrator responsible should appoint a staff representative. The staff representative is to meet with the inmate to help in preparing for the hearing and must assist at the hearing in the presentation of the inmate's position. The staff representative will also assist the inmate in preparing and submitting an appeal if the inmate requests assist-

ance or if the inmate wishes to appeal but is unable to prepare and submit the appeal.

(d) The hearing will be conducted by a psychiatrist who is not currently involved in the diagnosis or treatment of the inmate.

(e) The treating/evaluating psychiatrist and members of the treating/evaluating team must be present at the hearing and must present clinical data and background information relative to the need for medication.

(f) Within the guidelines specified in section 6620 (2) through (4), the individual conducting the hearing will approve or disapprove the use of psychotropic medication.

(g) The individual conducting the hearing will prepare a written report regarding the medication decision.

(h) The inmate shall be given a copy of the report and shall be advised that he may submit an appeal to the institution mental health division administrator regarding the medication decision within 24 hours of the decision and that the administrator will

review the medication decision within 24 hours of receipt of the inmate's appeal. The administrator will ensure that the inmate received all necessary procedural protections and that the justification for involuntary medication is appropriate within the guidelines set forth in section 6620 (2) through (5). If the inmate appeals, medication will not be administered before the administrator's decision. The staff representative will assist the inmate in preparing and submitting the appeal as specified in paragraph (c) above.

(i) The attending psychiatrist will provide follow-up monitoring of the patient's medication at least once every 30 days after the hearing and at least every 90 days thereafter. The follow-up will be documented in the medical record.

8. A form for use by the individual conducting the hearing and a form for providing notice to the inmate appears in Attachment 6600-IX "Notice of Medication Hearing and Advisement of Rights", Attachment 6600-X "Involuntary Medication Report" and Attachment 6600-XI "Appeal of Involuntary Medication Decision."

(d) The hearing will be conducted by a psychiatrist who is not currently involved in the diagnosis or treatment of the inmate.

(e) The treating/evaluating psychiatrist and members of the treating/evaluating team must be present at the hearing and must present clinical data and background information relative to the need for medication.

(f) Within the guidelines specified in section 6620 (2) through (4), the individual conducting the hearing will approve or disapprove the use of psychotropic medication.

(g) The individual conducting the hearing will prepare a written report regarding the medication decision.

(h) The inmate shall be given a copy of the report and shall be advised that he may submit an appeal to the institutional mental health division administrator regarding the medication decision within 24 hours of the decision and that the administrator will review the medication decision within 24 hours of receipt of the inmate's appeal. The administrator will ensure that the inmate received all necessary procedural protections and that the justification for involuntary medication is appropriate within the guidelines set forth in section 6620 (2) through (5). If the inmate appeals, medication will not be ad-

ministered before the administrator's decision. The staff representative will assist the inmate in preparing and submitting the appeal as specified in paragraph (c) above.

(i) Once every thirty days following the hearing, the need for continued involuntary medication will be reviewed by a psychiatrist other than the treating psychiatrist. If available, this review would preferably, but not necessarily, be done by a consultant from outside the institution. These reviews will be documented in the medical record.

8. A form for use by the individual conducting the hearing and a form for providing notice to the inmate appears in Attachment 6600-IX "Notice of Medication Hearing and Advisement of Rights", Attachment 6600-X "Involuntary Medication Report" and Attachment 6600-XI "Appeal of Involuntary Medication Decision."

6621. Voluntary Admission and Use of Psychotropic Medications

1. Prior to admitting a sentenced inmate to the mental health treatment unit on a voluntary basis, appropriate staff must assess the inmate's ability to give informed consent to such admission. In order to make this assessment, appropriate staff must determine whether the person understands the reasons for admission, the recommended treatment, his or

her right to object to inpatient treatment at any time and the means by which he or she may voice such objections. The assessment of the inmate's ability to give informed consent will be documented by appropriate staff in the individual's medical record. This documentation shall be in addition to the Consent to Admission form (see Attachment 6600-XII).

2. Psychotropic medication is to be used only for a diagnosable psychiatric disorder for which it is a commonly acceptable treatment. It is not designed for, nor shall it be used as, a method of chemical control for behaviors totally unrelated to mental illness.

3. If an inmate is to receive psychotropic medications voluntarily, his or her informed consent must be obtained and his or her ability to give such consent must be documented in the medical record by appropriate staff. This includes documentation that, prior to giving his written consent, the inmate understood why the medication is deemed necessary, how the medication could improve his or her condition, the possible side effects of the medication, and any alternative forms of treatment and the risks of those alternatives. A sentenced inmate who has not been committed for hospitalization and treatment, and who is not able to either consent to admission or to medication, will be subject to involuntary judicial commitment procedures. Once the inmate is committed by a court for hospitalization and treatment, the inmate is subject to the due process procedures specified in section 6620 prior to the involuntary administration of treatment.

6621. Voluntary Admission and Use of Psychotropic Medications

1. Prior to admitting a sentenced inmate to the mental health treatment unit on a voluntary basis, appropriate staff must assess the inmate's ability to give informed consent to such admission. In order to make this assessment, appropriate staff must determine whether the person understands the reasons for admission, the recommended treatment, his or her right to object to inpatient treatment at any time and the means by which he or she may voice such objections. The assessment of the inmate's ability to give informed consent will be documented by appropriate staff in the individual's medical record. This documentation shall be in addition to the Consent to Admission form (see Attachment 6600-XII).

2. Psychotropic medication is to be used only for a diagnosable psychiatric disorder for which it is a commonly acceptable treatment. It is not designed for, nor shall it be used as, a method of chemical control for behaviors totally unrelated to mental illness.

3. If an inmate is to receive psychotropic medications voluntarily, his or her informed consent must be obtained and his or her ability to give such consent must be documented in the medical record by appropriate staff. This includes documentation that,

prior to giving his written consent, the inmate understood why the medication is deemed necessary, how the medication could improve his or her condition, the possible side effects of the medication, and any alternative forms of treatment and the risks of those alternatives. A sentenced inmate who has not been committed for hospitalization and treatment, and who is not able to either consent to admission or to medication, will be subject to involuntary judicial commitment procedures. Once the inmate is committed by a court for hospitalization and treatment, the inmate is subject to the due process procedures specified in section 6620 prior to the involuntary administration of treatment.

59-91 (6000)
March 12, 1991

Attachment 6600-IX
Page 1

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NOTICE OF MEDICATION HEARING
AND ADVISEMENT OF RIGHTS

To: _____ Reg. No. _____

Diagnosis: _____

Proposed Treatment: _____

Reason for Treatment: _____

In order to consider whether or not you should be given psychotropic medication, you are being referred for a hearing. The hearing will convene on _____ at _____ at the
(date) (time)

following location _____.

You are entitled to be present at the hearing and to present evidence at the hearing. You are also entitled to have a staff member represent you at the hearing and, if institutional security is not threatened, to call witnesses. You may also request that staff witnesses be cross examined.

The inmate desires to have witnesses. Yes ____ No ____

Name _____

Name _____

Name _____

The inmate requests that the following staff member represent him.

Name _____

The Administrator of the Mental Health Division appointed the following staff member to represent the inmate.

Name _____

Date_____ Signature_____

Notice of Hearing given to inmate on _____ at _____
(date) (time)

by _____
Staff Member Signature Printed Name

(LOCAL REPRODUCTION AUTHORIZED)

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March 12, 1991
Attachment 6600-X
Page 1

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INVOLUNTARY MEDICATION REPORT

Institution	Institution Security Level
Name of Inmate	Register Number
Date of Mental Health Commitment	Diagnosis

I. Notice of Hearing

A. Advance written notice of the hearing was given to the inmate on _____ at _____ by
(date) (time)

_____.
(staff member)

B. The hearing was convened on _____ at _____.
(date) (time)

C. The inmate was advised of his or her rights at the hearing by _____ on _____ and a copy
(staff member) (date)
of the notice and advisement form is attached.

II. Staff Representative

A. Inmate requested staff representative _____
(name)
who appeared. Yes ____ No ____

B. Staff representative _____ was appointed
(name)
and appeared. Yes ____ No ____

III. Presentation of Evidence

A. Inmate (admits) (denies) that psychotropic medication is required.

B. Summary of inmate statement:

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Attachment 6600-X
Page 2

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FEDERAL BUREAU OF PRISONS

C. Witnesses

1. Inmate requested witnesses. Yes ____ No ____

2. The following persons were called and appeared.

_____ _____

_____ _____

3. A summary of the testimony of each witness is attached.

4. The following persons requested were not called for the following reason(s).

_____ _____

_____

_____

_____

5. Unavailable witnesses were requested to submit written statements and those statements were considered. Yes ____ No ____

D. Documentary Evidence

In addition to the notice and advisement form, the following information was considered:

1. Court order committing the inmate for mental health care and treatment. Yes ____ No ____

2. Psychiatric/psychological reports submitted at the commitment hearing. Yes ____ No ____

3. Treatment proposal and justification.
Yes ____ No ____

4. Alternative to medication. Yes ____ No ____

139-91 (6000)
June 17, 1991
Attachment 6600-X
Page 3

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IV. Findings

A. The inmate suffers from a mental disorder.
Yes ____ No ____

B. The hearing psychiatrist believes that the inmate does _____ does not _____ require psychotropic medication. Medication is required because the inmate:

1. Is dangerous to self or others
   Yes ____ No ____

2. Is gravely disabled.
   Yes ____ No ____

3. Is unable to function in open population.
   Yes ____ No ____

4. In order to become competent for trial.
   Yes ____ No ____

5. Is mentally ill and dangerous, and medication is necessary to treat the mental illness.
   Yes ____ No ____

V. Specific information relied upon to support findings:

VI. Medication Approved. Yes ____ No ____

VII. Justification for medication:

VIII. Appeal Rights

The inmate has been advised of the findings, specific evidence relied upon, medication approval and justification. The inmate has also been advised that he/she may appeal the medication decision within 24 hours

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to the administrator of the Mental Health Division and that the administrator has 24 hours after receipt of the appeal to render a decision. No medication will be given until the appeal is completed. A copy of this report has been given to the inmate.
Yes ____ No ____.

IX. _____
Reviewing Psychiatrist

Delivered to inmate on _____ at _____
(date) (time)

by _____
Staff Member Signature Printed Name

APPENDIX B (continued)—Prison Policy 6000. (139-91).

U.S. Department of Justice
Federal Prison Systems

Number: 139-91 (6000)

Date: June 17, 1991

Subject: Involuntary Psychiatric Treatment and Medication Procedures

Cancellation Date: June 17, 1992

Operations Memorandum

1. *PURPOSE.* This change is being issued to Operations Memorandum 59-91 (6000) "Involuntary Psychiatric Treatment and Medication Procedures and Voluntary Admission and Use of Psychotropic Medications" to make minor corrections.

2. *SUMMARY OF CHANGES.*

Page 4, section 7 (i) Replace entire paragraph with "Once every thirty days following the hearing, the need for continued involuntary medication will be reviewed by a psychiatrist other than the treating psychiatrist. If available, this review would preferably, but not necessarily, be done by a consultant from outside the institution. These reviews will be documented in the medical record.

Attachment 6600-X, Page 4 adds signature line for staff member.

3. *ACTION*. Pages shall be removed and inserted per the following instructions:

Remove	Insert
Page 4-5	Page 4-5
Page 3-4 of Attachment 6600-X	Page 3-4

KENNETH P. MORITSUGU, M.D., M.P.H.
Assistant Surgeon General
Medical Director, Bureau of Prisons

PATRICK R. KANE
Assistant Director
Correctional Programs Division
Bureau of Prisons

59-91 (6000)
March 12, 1991
Attachment 6600-X
Page 3

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IV. Findings

A. The inmate suffers from a mental disorder.
Yes ____ No ____

B. The hearing psychiatrist believes that the inmate does _____ does not _____ require psychotropic medication. Medication is required because the inmate:

1. Is dangerous to self or others.
   Yes ____ No ____

2. Is gravely disabled.
   Yes ____ No ____

3. Is unable to function in open population.
   Yes ____ No ____

4. In order to become competent for trial.
   Yes ____ No ____

5. Is mentally ill and dangerous, and medication is necessary to treat the mental illness.
   Yes ____ No ____

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March 12, 1991

Attachment 6600-XI
Page 1

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APPEAL OF INVOLUNTARY MEDICAL DECISION

I, _____, hereby appeal this
(print name and register number)

decision by _____ on ____.
(print name of reviewing psychiatrist) (date)

appealing for the following reasons(s):

_____

_____

_____

_____

_____

_____

_____ _____ _____
Date Time Signature

RESPONSE BY ADMINISTRATOR

_____

_____

_____

_____ _____ _____
Date Time Signature

(LOCAL REPRODUCTION AUTHORIZED)

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March 12, 1991

Attachment 6600-XII
Page 1

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CONSENT TO ADMISSION FOR MENTAL HEALTH TREATMENT

This is to notify you that as a result of your evaluation we believe you need treatment in the psychiatric hospital of this institution. We believe you have a mental illness and need this kind of treatment.

The proposed treatment would include different types of psychotherapy and may include psychiatric medications. However, you will not be given any psychiatric medications without your knowledge and consent, unless an emergency arises.

If you agree, you will be admitted now for psychiatric treatment. You will be a voluntary patient. *You do have a right to refuse this treatment now or at any time in the future*. If you choose to do so, you should notify the warden in writing of your wish to refuse treatment. Staff will help you, if you so request, in preparing your written refusal.

If you refuse treatment and clinical staff believe that such treatment is still necessary, we will request that the U.S. Attorney file a motion in the U.S. District Court for involuntary commitment. Before such commitment could occur

you would have a court hearing with an attorney representing you.

By signing this form, I acknowledge that I have received a copy of this Consent and I understand my right and choices regarding psychiatric hospitalization. I hereby consent to inpatient hospitalization for psychiatric treatment.

_____ _____

Inmate Signature Date

_____

FOR STAFF USE ONLY

This inmate ____ is ____ is not competent to give informed consent for voluntary admission to the Mental Health Unit.

This assessment is based on the following:

_____ _____

Staff Signature/Printed Name/Title Date

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APPENDIX C—Excerpts of Perjured Affidavits.

DECLARATION OF WALTER KUCKES

I, Walter Kuckes, declare as follows:

. . . no efforts have been made to force medicate Phelps

. . . I have not aggressively sought to force medication upon Phelps

I declare under penalty of perjury . . .

Signed WALTER KUCKES

DECLARATION OF STEVEN NORTON

I, Steven Norton declare as follows:

I have read the medical record of Mr. Phelps . . .

. . . Phelps has been treated with anti-psychotic and anti-depressant medication with no adverse side effects . . .

I declare under penalty . . .

Signed/STEVEN NORTON

DECLARATION OF STEVEN NORTON AND DANIEL FOSTER TO U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

Mr. Phelps has been prescribed psychotrophic medication. He has refused to take the medication . . . and has resisted taking the psychotrophic medication . . .

Mr. Phelps has not acted aggressively . . . and he is not confrontational . . . he complys with institutional rules . . . his behavior is not aggressive to the extent that he represents a danger to others or to himself

The issue of forced medication is a continious issue regarding Mr. Phelps . . . he may benefit from the medication

Signed/STEVEN NORTON
DANIEL FOSTER

TESTIMONY OF DR. DAVE MYRAD IN U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

Mr. Phelps was given psychotrophic medication and had a severe adverse reaction to the medication. We discontinued the medication immediately. When he recovered (after 4 months) we realized that he did not need medication and did not prescribe it again. I have personal knowledge of the incident, and I read the incident in the medical record of Mr. Phelps which I have before me.

Special Release Hearing Transcript
August 1989

APPENDIX D—Administrative Remedy Response.

U S Department of Justice Central Office Administrative Remedy Appeal

Received 2-19-92 / PHELPS, COY R. 78872-011 Unit 1-1 FMC-RCH

ADMIN. REM. 23527-A1 RESPONSE (from original BP 8 # 869 on 2-21-92)

You claim that you are being harassed by Mental Health staff and their treatment toward you is adversarial and unsupportive.

You were committed to the Bureau of Prisons for treatment of a mental illness or defect pursuant to 18 USC 4243D. Pursuant to 18 USC 4243D, Medical and Mental Health staff are obligated to offer and to provide a regimen of medical, psychiatric and/or psychological care or treatment for your illness. *Although you have the right to refuse treatment,* which you are currently doing, staff are under an obligation to continue to offer you *the required care* until you have recovered from your mental disease to an extent that you can function in the community without creating a substantial risk of danger. We find no evidence to support your claims of harassment by Mental Health staff or that they are treating you inappropriately. We find no basis for any relief.

3-30-92
DATE

for ROBERT J. (Illegible)
J. M. RALPH, ADMINISTRATOR
NATIONAL INMATE APPEALS

APPENDIX E—Notice of Medication Hearing and Advisement of Rights.

59-01 (6000)
March 12, 1991
Attachment 6600-IX
Page 1

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

NOTICE OF MEDICATION HEARING
AND ADVISEMENT OF RIGHTS

To: Phelps, Coy Reg. No. 78872-011

Diagnosis: Delusional Disorder

Proposed Treatment: Psychotropic Medication

Reason for Treatment: Reduce Delusional Thinking

In order to consider whether or not you should be given psychotropic medication, you are being referred for a hearing. The hearing will convene on 10/19/92 at 1:00 p.m. at the following location Mental Health Conference Room.

You are entitled to be present at the hearing and to present evidence at the hearing. You are also entitled to have a staff member represent you at the hearing and, if institiutional security is not threatened, to call witnesses. You may also request that staff witnesses be cross examined.

The inmate desires to have witnesses. Yes X No

Name Tom Wagner Inmate Companions
Name Bruce Merchant Mosse
Name Barbara Ryan Box
Timmy Valona, Vernon Plumb

The inmate requests that the following staff member represent him.

Name Paul Brundridge

The Administrator of the Mental Health Division appointed the following staff member to represent the inmate.

Name _____

_____ _____
Date Signature

Notice of Hearing given to inmate on 10/16/92 at 5:45 p.m.

by M A Conroy PhD M A Conroy, PhD

(LOCAL REPRODUCTION AUTHORIZED)

Pt states he is protesting the hearing

APPENDIX E (continued)—Excerpts From Diagnostic and Statistical Manual of Mental Disorders (Third Edition—Revised).

DIAGNOSTIC AND STATISTICAL
MANUAL OF
MENTAL DISORDERS
(THIRD EDITION—REVISED)
DSM-III-R

Published by the
American Psychiatric Association
Washington, DC
1987

CAUTIONARY STATEMENT

The specified diagnostic criteria for each mental disorder are offered as guidelines for making diagnoses, * * *.

These diagnostic criteria and the DSM-III-R classification of mental disorders * * * do not encompass all the conditions that may be legitimate objects of treatment or research efforts.

* * *. It is to be understood that inclusion here, * * * does not imply what the condition meets legal or other nonmedical criteria for what constitutes mental disease, mental disorder, or mental disability. The clinical and scientific considerations involved in categorization of these conditions as mental disorders may not be wholly relevant to legal judgments, * * *.

CAUTIONS IN THE USE OF DSM-III-R

DSM-III-R and Planning Treatment. Making a DSM-III-R diagnosis represents only an initial step in a comprehensive evaluation leading to the formulation of a treatment plan. Additional information about the person being evaluated beyond that required to make a DSM-III-R diagnosis will invariably be necessary.

Cautionary Statement. The reader is directed to a cautionary statement, appearing following this introduction, that amplifies three points: the proper use of DSM-III-R requires specialized clinical training; conditions not included in the DSM-III-R classification may be legitimate subjects of treatment or research efforts; and the clinical and scientific considerations that were the basis of the DSM-III-R classification and diagnostic criteria may not be relevant to considerations in which DSM-III-R is used outside clinical or research settings, e.g., in legal determinations.

The Use of DSM-III-R in Different Cultures. When the DSM-III-R classification and diagnostic criteria are used to evaluate a person from an ethnic or cultural group different from that of the clinician's, * * * caution should be exercised in the application of DSM-III-R diagnostic criteria to assure that their use is culturally valid. * * * . The clinician * * * should apply DSM-III-R with open-mindness to the presence of distinctive cultural patterns and sensitivity to the possibility of unintended bias because of such differences.

When an experience or behavior is entirely normative for a particular culture—* * * it should not be regarded as pathological. Culture-specific symptoms of distress, such as particular somatic symptoms associated with distress in

members of different ethnic and cultural groups, may create difficulties in the use of DSM-III-R, because the psychopathology is unique to that culture or because the DSM-III-R categories are not based on extensive research with non Western populations.

295.6x Residual Type

This category should be used when there has been at least one episode of Schizophrenia, but the clinical picture that occasioned the evaluation or admission to clinical care is without prominent psychotic symptoms, though signs of the illness persist. Emotional blunting, social withdrawal, eccentric behavior, illogical thinking, and mild loosening of associations are common. If delusions or hallucinations are present, they are not prominent, and are not accompanied by strong affect.

The course of this type is either chronic or subchronic, since "acute exacerbation," by definition, involves prominent psychotic symptoms, and "in remission" implies no signs of the illness.

Diagnostic criteria for 295.6x Residual Type

A type of Schizophrenia in which there are:

A. Absence of prominent delusions, hallucinations, incoherence, or grossly disorganized behavior.

B. Continuing evidence of the disturbance, as indicated by two or more of the residual symptoms listed in criterion D of Schizophrenia.

STATEMENT BY DR. NORTON

"SUMMARY AND CONCLUSION: Mr. Phelps is an individual with a strongly ingrained belief system that includes very racist attitudes toward a variety of minority groups. This belief system is aimed specifically at Jewish people. Mr. Phelps does not display any overt or obvious delusional ideation related to this, but there are subtle indications that a delusional belief system underlies many of his attitudes and ideas, and the intensity of his belief system is quite strong. It is the opinion of the undersigned that Mr. Phelps has delusional ideation in regards to not only his own relationship with God, but also to his concepts concerning minority groups being potentially threatening to him. Other suggestions of delusional ideation are that Mr. Phelps seemingly has little awareness of how his stated beliefs affect other people. He openly referred to the AUSA involved in this case as "Kike," and also openly refers to "niggers", and use other very derogatory names. One would suspect that if Mr. Phelps' attitudes are simply an extreme belief system, he would be more selective in displaying this belief system. It appears that Mr. Phelps, due to his delusional ideation, has little control over his expression of his beliefs." * * *.

"Mr. Phelps does not demonstrate other symptoms of overt mental illness." * * *.

* * *. He denied and did not evidence auditory or visual hallucinations, unusual or special powers, or symptoms of mania and depression. * * *. He denied and did not evidence signs of suicidal or homicidal ideation.

* * *. He described that he is a member of a special religious group * * *. This religious group and Mr. Phelps himself apparently take an extremely fundamentalist interpretation of religious writings.

Mr. Phelps articulated quite clearly his belief * * *. He denied any sense of personal threat at this time; * * *. Mr. Phelps articulated quite clearly that he believed the only way to counteract the Jewish people was by the violent overthrow of both the current government and the elimination of the Jewish people. He noted that the Bible supported this violent ideology. He stated that he would support any form of violence against the Jewish people, or against the Federal government, and would encourage others to participate in such actions.

Mr. Phelps did indicate, however, that he does not feel "persecuted" and at this point, did not plan to participate in any violent actions. He described that if he was released to the community, he would participate in the preaching of his beliefs and would encourage others to adopt his belief system, but he would not engage in any acting out behaviors. Mr. Phelps also stated that he agreed his beliefs were very racist * * *; although he strongly denied this as a symptom of mental illness. He noted that under the constitution, he and others have the right of free speech and free opinion. Mr. Phelps often would refer to these groups in very derogatory terms, at times noting that black people were nothing more than animals somehow enslaved to Jewish people. He also described that he believed many people throughout the world share his belief system. He seemed to connect this concept to the "fact" that he would have little difficulty then convincing other people to join his religion. He indicated that he would be able to recruit other people to share his belief system and possibly to help him to accomplish his goals.

* * *. Mr. Phelps noted quite strongly that he would not be involved in any type of psychotherapeutic efforts; although, he did mention on one occasion that if he could find a staff ember that he trusted he would be willing to talk

with this person about problem areas. Basically, Mr. Phelps denied any need for mental health treatment and noted that he was not mentally ill, but did possess a very racist belief system. * * *.

* * *.

Additionally, Mr. Phelps is quite open in admitting that due to his belief system, he [could be perceived as being] dangerous. * * * connect this to his racist and "religious" attitudes. * * *.

* * * Mr. Phelps is dangerous due to symptoms of mental illness. Specifically, he appears to have a mental illness that incorporates extreme delusional, religious, ideation * * *. * * * based on his delusional, religious, belief system. * * *. Mr. Phelps is noncompliant with treatment recommendations while in the institution, and there is little indication to support the idea that he would comply with treatment recommendations in the community.

* * *.

I have not "aggressively sought to force medications" upon Phelps. * * *.

* * *.

Certificate of Service

I, SUSAN M. SCERBO, certify under penalty of perjury, pursuant to the statutory provisions of 28 USC 1746, that I am over the age of 18 and that I am not a party in this case and that I am the Operations Manager of The Reporter Company Inc., a full service appellate printing agency, and that I placed, or caused to be placed, the required number of copies of this completed printed document into separate correctly addressed envelopes, affixed with sufficient first class U. S. Postage, and placed, or caused to be place, the envelopes into a mailbox, designated for the purpose of transmitting U. S. Mail, and mailed the envelopes to the following:

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